

# VIDEOTAPE DEPOSITION OF KEVIN J. KENNEDY 2/8/2012

<p style="text-align: center;">UNITED STATES DISTRICT COURT EASTERN DISTRICT OF WISCONSIN</p> <hr/> <p>ALVIN BALDUS, CINDY BARBERA, CARLENE BECHEN, RONALD BIENDSEIL, RON BOONE, VERA BOONE, ELVIRA BUMPUS, EVANJELINA CLEEREMAN, SHEILA COCHRAN, LESLIE W. DAVIS III, BRETT ECKSTEIN, MAXINE HOUGH, CLARENCE JOHNSON, RICHARD KRESBACH, RICHARD LANGE, GLADYS MANZANET, ROCHELLE MOORE, AMY RISSEUW, JUDY ROBSON, GLORIA ROGERS, JEANNE SANCHEZ-BELL, CECELIA SCHLIEPP, and TRAVIS THYSSEN,</p> <p style="text-align: center;">Plaintiffs,</p> <p>TAMMY BALDWIN, GWENDOLYNNE MOORE, and RONALD KIND,</p> <p style="text-align: center;">Intervenor-Plaintiffs,</p> <p style="text-align: center;">v. <span style="float: right;">File No. 11-CV-562</span></p> <p>Members of the Wisconsin Government Accountability Board, each only in his official capacity: MICHAEL BRENNAN, DAVID DEININGER, GERALD NICHOL, THOMAS CANE, THOMAS BARLAND, and TIMOTHY VOCKE,</p> <hr/> <p style="text-align: center;">[Caption Continued]</p> <p style="text-align: center;"><b>VIDEOTAPE DEPOSITION</b> <b>KEVIN J. KENNEDY</b></p> <p style="text-align: center;">Madison, Wisconsin February 8, 2012</p> <p style="text-align: center;">Peggy S. Christensen, RPR, CRR, CCP Registered Professional Reporter</p>	<p style="text-align: center;">1 <u>I N D E X</u></p> <p>2 <u>Witness</u> <span style="float: right;"><u>Pages</u></span></p> <p>3 KEVIN J. KENNEDY</p> <p>4 Examination by Mr. Poland <span style="float: right;">7/136</span></p> <p>5 Examination by Mr. Hassett <span style="float: right;">130</span></p> <p>6 Examination by Mr. Hodan <span style="float: right;">136</span></p> <p>7</p> <p>8 <u>E X H I B I T S</u></p> <p>9 <u>No.</u> <u>Description</u> <span style="float: right;"><u>Identified</u></span></p> <p>10 157 Notice of Deposition <span style="float: right;">7</span></p> <p>11 158 Defendants' Answers to Plaintiffs'  First Set of Interrogatories and  First Request for Production of  Documents <span style="float: right;">14</span></p> <p>12</p> <p>13 159 LTSB County Shape File Analysis <span style="float: right;">36</span></p> <p>14 160 SVRS 8.0 - Redistricting Key Changes <span style="float: right;">67</span></p> <p>15 161 Defendants' Responses to Plaintiffs'  Second Set of Interrogatories and  Second Request for Production of  Documents <span style="float: right;">71</span></p> <p>16</p> <p>17 162 Defendants' Supplemental Answers  to Plaintiffs' First Set of  Interrogatories and First Request for  Production of Documents <span style="float: right;">78</span></p> <p>18</p> <p>19 163 Congressional exception report <span style="float: right;">82</span></p> <p>20</p> <p>21 164 Senate exception report <span style="float: right;">82</span></p> <p>22</p> <p>23 165 Assembly exception report <span style="float: right;">82</span></p> <p>24</p> <p>25 (Continued)</p> <p style="text-align: center;">3</p>
<p>and KEVIN KENNEDY, Director and General Counsel for the Wisconsin Government Accountability Board,</p> <p style="text-align: center;">Defendants,</p> <p>F. JAMES SENSENBRENNER, JR., THOMAS E. PETRI, PAUL D. RYAN, JR., REID J. RIBBLE, and SEAN P. DUFFY,</p> <p style="text-align: center;">Intervenor-Defendants.</p> <hr/> <p>VOCES DE LA FRONTERA, INC., RAMIRO VARA, OLGA WARA, JOSE PEREZ, and ERICA RAMIREZ,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v. <span style="float: right;">Case No. 11-CV-1011 JPS-DPW-RMD</span></p> <p>Members of the Wisconsin Government Accountability Board, each only in his official capacity: MICHAEL BRENNAN, DAVID DEININGER, GERALD NICHOL, THOMAS CANE, THOMAS BARLAND, and TIMOTHY VOCKE, and KEVIN KENNEDY, Director and General Counsel for the Wisconsin Government Accountability Board,</p> <p style="text-align: center;">Defendants.</p> <hr/>	<p>1 <u>E X H I B I T S</u> (Continuing)</p> <p>2 <u>No.</u> <u>Description</u> <span style="float: right;"><u>Identified</u></span></p> <p>3 166 Exhibit E to Plaintiffs' Second  Amended Complaint <span style="float: right;">102</span></p> <p>4</p> <p>5 167 Waukesha County Case No. 11-CV-3995 -  Answer to Amended Complaint for  Declaratory and Other Relief <span style="float: right;">126</span></p> <p>6</p> <p>7 168 Declaration of Kevin Kennedy In  Support of the Defendants' Motion  for Protective Order <span style="float: right;">130</span></p> <p>8</p> <p>9</p> <p>10 (The original exhibits were attached to the original  transcript and copies of were provided to counsel.)</p> <p>11</p> <p>12</p> <p>13 (Exhibits 12, 13, 79, 80, 86, 150 and 151 referred to  herein were marked at previously held depositions.)</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25 (The original deposition transcript was filed with  Attorney Douglas M. Poland)</p> <p style="text-align: center;">4</p>

# VIDEOTAPE DEPOSITION OF KEVIN J. KENNEDY 2/8/2012

1 VIDEOTAPE DEPOSITION of KEVIN J. KENNEDY,  
2 a witness of lawful age, taken on behalf of the  
3 Plaintiffs, wherein Alvin Baldus, et al., are  
4 Plaintiffs, and Members of the Wisconsin Government  
5 Accountability Board, et al., are Defendants, pending  
6 in the United States District Court for the  
7 Eastern District of Wisconsin, pursuant to notice,  
8 before Peggy S. Christensen, a Registered  
9 Professional Reporter and Notary Public in and  
10 for the State of Wisconsin, at the offices of  
11 Godfrey & Kahn, S.C., Attorneys at Law, One East Main  
12 Street, Suite 500, in the City of Madison, County of  
13 Dane, and State of Wisconsin, on the 8th day of  
14 February 2012, commencing at 9:11 in the forenoon.  
15

16

17 A P P E A R A N C E S

18

19 DOUGLAS M. POLAND and AARON A. SELIGMAN, Attorneys,  
20 for GODFREY & KAHN, S.C., Attorneys at Law,  
21 One East Main Street, Suite 500, Madison,  
22 Wisconsin 53703, appearing on behalf of  
23 Plaintiffs Alvin Baldus, et al.

24

25 JACQUELINE BOYNTON, Attorney at Law,  
Caro Tower, 2266 North Prospect Avenue,  
Suite 505, Milwaukee, Wisconsin 53202,  
appearing on behalf of Plaintiffs  
Voces De La Frontera, Inc., et al.

5

1 A P P E A R A N C E S (Continued)

2 PETER G. EARLE, Attorney,  
3 for LAW OFFICE OF PETER EARLE, LLC, Attorneys at Law,  
4 839 North Jefferson Street, Suite 300,  
5 Milwaukee, Wisconsin 53202, appearing by  
6 telephone on behalf of Plaintiffs  
7 Voces De La Frontera, Inc., et al.

8 P. SCOTT HASSETT, Attorney,  
9 for LAWTON & CATES, S.C., Attorneys at Law,  
10 Ten East Doty Street, Suite 400, Madison,  
11 Wisconsin 53703, appearing on behalf of the  
12 Intervenor-Plaintiffs.

13 MARIA S. LAZAR, Assistant Attorney General,  
14 for STATE OF WISCONSIN DEPARTMENT OF JUSTICE,  
15 17 West Main Street, Madison, Wisconsin 53703,  
16 appearing on behalf of the Defendants.

17 PATRICK J. HODAN and DANIEL KELLY, Attorneys,  
18 for REINHART BOERNER VAN DEUREN S.C.,  
19 Attorneys at Law, 1000 North Water Street,  
20 Suite 2100, Milwaukee, Wisconsin 53202,  
21 appearing on behalf of the Defendants.

22 Also present: James Porter, CDVS  
23 Campbell Legal Video Company  
24 417 Heather Lane, Suite B  
25 Fredonia, WI 53021  
(262) 447-2199

6

1 (Exhibit No. 157 marked for  
2 identification)

3

4 KEVIN J. KENNEDY,  
5 called as a witness, being first duly sworn,  
6 testified on oath as follows:  
7

8 EXAMINATION

9 By Mr. Poland:

10 Q Good morning, Mr. Kennedy.

11 A Good morning.

12 Q Mr. Kennedy, you're appearing here today pursuant  
13 to a Notice of Deposition; is that correct?

14 A That's correct.

15 Q You are named as one of the individual defendants  
16 in your official capacity as director and general  
17 counsel of the Government Accountability Board;  
18 correct?

19 A That's right.

20 Q I'm going to hand you a copy of what we've marked  
21 as Exhibit No. 157. It is the Notice of  
22 Deposition for today's deposition. And that's the  
23 Notice of Deposition that you're appearing  
24 pursuant to today; is that correct?

25 A That's right.

7

1 Q Mr. Kennedy, what is your -- I just mentioned your  
2 positions with the Government Accountability  
3 Board. What is the Government Accountability  
4 Board? Can you describe it for the Court, please?

5 A The Government Accountability Board is a  
6 nonpartisan state office, independent agency,  
7 created by the Legislature. It consists of six  
8 former judges appointed by the governor for  
9 six-year staggered terms. They're nominated by a  
10 randomly selected panel of Court of Appeals judges  
11 from each of the four districts in the state. The  
12 governor makes his selection. It's subject to a  
13 two-thirds confirmation by the Senate.

14 The Government Accountability Board is  
15 responsible for the administration and enforcement  
16 of the laws relating to campaign finance,  
17 elections, ethics, lobbying, and contract  
18 disclosure for the state of Wisconsin.

19 Q And you mentioned that the -- if I use the term  
20 G.A.B., we'll understand that it refers to the  
21 Government Accountability Board?

22 A Yes.

23 Q You mentioned the G.A.B. is an independent agency;  
24 is that correct?

25 A That's right.

8

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1 Q So it does not fall under any particular branch of  
2 government; is that correct?

3 A It's part of the executive branch, but it does not  
4 report to the governor. It's independent means  
5 it's not a cabinet agency.

6 Q So it does not report to the governor?

7 A That's right.

8 Q Does it report to the Legislature?

9 A No, it does not.

10 Q It doesn't answer to either of those particular  
11 branches of government?

12 A No. It has checks and balances, meaning that the  
13 members are appointed by the governor, as any  
14 member of an executive branch agency would be, and  
15 subject to legislative confirmation; but we don't  
16 serve at the pleasure of the governor. I mean --  
17 By we, I mean my boss is the members. I serve at  
18 the pleasure of the board. I'm not a  
19 gubernatorial appointee.

20 Q Who makes decisions on behalf of the Government  
21 Accountability Board for actions that it takes?

22 A Well, the Government Accountability Board is  
23 ultimately responsible for most decisions, but it  
24 delegates, by statute and by practice, a number of  
25 decisions to its director and general counsel,

9

1 which is me.

2 Q So when there are decisions to be made in lawsuits  
3 where the G.A.B. is sued, is it the board itself,  
4 in conjunction with you, that are making those  
5 decisions?

6 A Yes.

7 Q Are you the final level of decision making in the  
8 G.A.B.?

9 MR. HODAN: Object to form. You  
10 can go ahead and answer.

11 A The board is the final level of decision, but, as  
12 I said, they will often delegate to me to make  
13 certain decisions. Often that will be in  
14 consultation with the Chair, where we will decide  
15 whether it's significant enough to involve all of  
16 the board members.

17 Q Decisions that are made then by the G.A.B. are not  
18 subject to change by the Legislature or the  
19 governor; is that correct?

20 A No, they're not. Obviously they can be challenged  
21 in court. Legislation can be introduced under  
22 certain circumstances, such as, you know, when we  
23 adopt administrative rules. There is a procedure  
24 in the statutes for legislative and executive  
25 oversight for those types of decisions.

10

1 Q I'd like to start off our deposition this morning  
2 by talking a little bit about some of the  
3 discovery in this particular litigation that we've  
4 had. We're going to go through that, and then  
5 we'll move on from there. Have you received any  
6 discovery requests that the plaintiffs tendered to  
7 the G.A.B. in this case?

8 A Yes. Our attorneys have passed those discovery  
9 requests on to us, and we've worked with them to  
10 develop responses to those requests.

11 Q I'm handing you a copy of a document that  
12 we've previously marked at a deposition as  
13 Exhibit No. 13. I'd ask you to take a look at  
14 that.

15 A Okay.

16 Q Mr. Kennedy, have you seen Exhibit No. 13 before?

17 A I have seen it.

18 Q Turn your attention to the last page of  
19 Exhibit 13, and you will see a date of  
20 November 22nd, 2011. Do you see that?

21 A Yes.

22 Q Do you believe that you first saw Exhibit No. 13  
23 on or around that time?

24 A I would assume so, yes. I don't recall when I saw  
25 it, but, again, our attorneys have been routinely

11

1 passing the requests for information to us to the  
2 extent that we could provide them with assistance  
3 in responding to them.

4 Q Did you provide assistance to the attorneys in  
5 responding to the interrogatories and the document  
6 production requests that are identified in  
7 Exhibit No. 13?

8 A With respect to some of them. A lot of them had  
9 nothing to do with what my agency would have any  
10 responsibility for.

11 Q In response to receiving this set of  
12 interrogatories, did you and the G.A.B. look for  
13 documents that were responsive to Exhibit 13?

14 A We -- In response to requests from our attorneys,  
15 we did look for documents that we thought we might  
16 have any access to. Again, a number of these  
17 apparently did not deal with information we would  
18 have had.

19 Q When the lawsuit -- Do you recall approximately  
20 when the Baldus lawsuit was filed?

21 A No. I just know it was sometime last fall.

22 Q I'm sorry, when?

23 A Sometime last fall is all I could tell you.

24 Q All right. If I told you that it was last summer,  
25 would that refresh your recollection?

12

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1 A Oh, that's right. Yeah, that would.  
 2 Q There have been a series of amended complaints.  
 3 A That's right.  
 4 Q At the time that the Baldus complaint was filed,  
 5 did the G.A.B. do anything to direct the staff to  
 6 preserve all records in its possession, custody or  
 7 control?  
 8 A At the immediate time that it was filed, the  
 9 answer is no. We just continued our normal  
 10 practice of document retention.  
 11 Q What is the normal practice of document retention  
 12 with the G.A.B.?  
 13 A Well, generally most of our documents are kept on  
 14 our computer system relating to the work we do and  
 15 backed up by the Department of Administration.  
 16 Q Is there a document retention policy that requires  
 17 that?  
 18 A We don't have a specific document retention policy  
 19 laid out for the agency, no.  
 20 Q Is there any instruction to -- just blanket  
 21 instruction to employees or staff of the G.A.B. or  
 22 members to retain documents?  
 23 A Yeah. That's a general direction that's been  
 24 provided, primarily orally through the supervisors  
 25 to the staff.

13

1 Q Does the G.A.B. follow any particular procedures  
 2 or policies to verify that nothing that relates to  
 3 pending litigation is deleted or destroyed?  
 4 A Whenever there is pending litigation, our internal  
 5 staff counsel will generally notify staff relating  
 6 to that to keep them apprised of those issues.  
 7 But, you know, it's a pretty small agency, so  
 8 we're able to communicate about any litigation.  
 9 Q Do you know whether staff counsel did that in this  
 10 particular case with respect to the Baldus  
 11 litigation?  
 12 A Yes, we did.  
 13 Q Do you know when that was done?  
 14 A I don't know exactly when that was done. It was  
 15 done once, and then it was reiterated just within  
 16 the last month.  
 17 (Exhibit No. 158 marked for  
 18 identification)  
 19 Q Mr. Kennedy, I'm handing you a copy of a document  
 20 we've marked as Exhibit No. 158.  
 21 MR. HASSETT: 158?  
 22 MR. POLAND: 158, yes.  
 23 Q I'd like you to take a minute to look through it.  
 24 Have you had an opportunity to look at  
 25 Exhibit 158?

14

1 A Yes, I have.  
 2 Q Can you identify it for the record, please?  
 3 A It is a document entitled Defendants' Answers to  
 4 Plaintiffs' First Set of Interrogatories and First  
 5 Request for Production of Documents.  
 6 Q Is this a document that you've seen before?  
 7 A Yes, I've seen it before.  
 8 Q I would like you to turn to the very last page of  
 9 Exhibit 158. Do you see there is a verification  
 10 of interrogatory answers there?  
 11 A Yes.  
 12 Q Do you see that it appears to be your signature on  
 13 that document?  
 14 A Yes.  
 15 Q Is that, in fact, your signature?  
 16 A Yes, it is.  
 17 Q I would like to draw your attention to page  
 18 number 9 of Exhibit 158. You testified a moment  
 19 ago that you had input into some of the responses  
 20 to the plaintiffs' first set of interrogatories;  
 21 correct?  
 22 A Yes, I did.  
 23 Q I'd like to draw your attention to Interrogatory  
 24 No. 7, which asks, "Please identify and describe  
 25 the 'state and/or governmental interests' that, in

15

1 your Answer you maintain are 'directly advance[d]'  
 2 by the new redistricting law and describe how they  
 3 are advanced." Do you see that?  
 4 A I do.  
 5 Q And there is an answer, and it goes on to continue  
 6 on page 10; is that correct?  
 7 A That's correct.  
 8 Q Is that an interrogatory response into which you  
 9 had any input?  
 10 A No.  
 11 Q Do you know who did?  
 12 A No, I don't. This was prepared by our attorneys  
 13 that are present in the deposition.  
 14 Q Nonetheless, you did verify that response;  
 15 correct?  
 16 A That's right.  
 17 Q I'd like you to turn to page 11, please.  
 18 Interrogatory No. 9 states, "Please identify all  
 19 facts that support the Defendants' assertion that  
 20 the 2011 maps are constitutional." Do you see  
 21 that?  
 22 A Yes, I do.  
 23 Q Did you have any input into the response to  
 24 Interrogatory No. 9?  
 25 A No, I did not.

16

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1 Q Do you know who did?

2 A No, I do not. Again, this was prepared by our

3 attorneys.

4 Q Nonetheless, you did verify that interrogatory

5 response; correct?

6 A Yes, I did.

7 Q Set that document aside. I'm going to hand you a

8 document that previously has been marked as an

9 exhibit. This is Exhibit No. 86. I'd like you to

10 take a look at that document. Take as much time

11 as you need to look through it. Have you finished

12 reviewing it?

13 A Yes.

14 Q Exhibit 86 consists of several documents together.

15 It consists of a letter dated January 23rd from

16 me, a Notice of Deposition of a G.A.B. witness

17 identifying certain topics, and then it has

18 attached to it two different memorandums prepared

19 by the G.A.B., one dated November 10th, 2011, and

20 one dated January 13th, 2012. Do you see that?

21 A Yes.

22 Q All right. Have you seen --

23 MR. HODAN: You mean January 15th?

24 Q January 13th; correct?

25 MR. HODAN: Okay.

17

1 A Yes.

2 Q Have you seen Exhibit 86 before?

3 A I believe I have seen it, at least in parts, if

4 not entirely. But I know I have seen every

5 document that was in here.

6 Q Did you have conversations with counsel -- I'm not

7 asking you for the substance, just the topic. Did

8 you have conversations with counsel about the

9 categories of documents that were identified in

10 the January 23rd letter that's the first two pages

11 of Exhibit No. 86?

12 A I'm sorry, the January 25 letter?

13 Q The January 23rd letter.

14 A Yes.

15 Q So there were five categories -- I'm sorry, seven

16 categories of enumerated documents in there?

17 A That's right.

18 Q And you had conversations with counsel about

19 those?

20 A That's right.

21 Q So what I would like to do now is I would like to

22 talk about the issues that are raised by these two

23 memorandums.

24 A Sure.

25 Q We're going to try to figure this out. Before I

18

1 do that I wanted to ask you just a question about

2 the role that G.A.B. played in the redistricting

3 process. Did G.A.B. play any role at all in the

4 redistricting process before Acts 43 and 44 were

5 enacted into law?

6 A No.

7 Q Did anyone with the Legislature consult with you

8 or the G.A.B., to your knowledge, before settling

9 on the process by which redistricting was

10 accomplished in 2011?

11 A No.

12 Q Is it your understanding that in previous

13 redistricting efforts in Wisconsin, so after the

14 2000 decennial census, after the 1990 decennial

15 census, that the municipalities and counties

16 completed their local redistricting process before

17 legislative districts were finalized?

18 A That's my understanding, yes.

19 Q And a different procedure was followed for the

20 redistricting in 2011; correct?

21 A That's right.

22 Q Do you know why that was done?

23 A I don't.

24 Q Did anyone ask your opinion or G.A.B.'s opinion

25 whether it was a good idea to change the way the

19

1 process had been in the past and do it differently

2 this year?

3 A No.

4 Q All right. So let's talk about these memorandums

5 that are identified. We've previously marked the

6 November 10th, 2011, memorandum as Exhibit No. 79.

7 Have you seen Exhibit No. 79 before, Mr. Kennedy?

8 A Yes, I have.

9 Q Can you identify it, please?

10 A It is a memorandum addressed to Nathaniel

11 Robinson, the elections division administrator,

12 and Ross Hein, the elections supervisor, from

13 Sarah Whitt, who is our Statewide Voter

14 Registration System functional lead, and one of

15 our staff counsel, Shane Falk.

16 Q Now the subject matter of this memorandum on the

17 very first page reads "Census Blocks Conflicting

18 with Municipal Boundaries"; correct?

19 A That's right.

20 Q There are a number of statements that are made in

21 this memorandum. I don't want to go through all

22 of them and review all of them or read them into

23 the record, but there are some, what appear to be,

24 conclusory statements that are made or conclusions

25 reached in this particular memorandum that I

20

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1 wanted to draw your attention to.  
 2 And I think penultimately there is a  
 3 statement on the first page, this is the very  
 4 first paragraph before the background, it's that  
 5 second sentence which states, "Several practical  
 6 implementation concerns have arisen regarding  
 7 census blocks conflicting with actual municipal  
 8 boundaries." Do you see that statement?  
 9 A Yes.  
 10 Q Then there is a statement that is made on page 4  
 11 under the heading Use of Corrected Wards in SVRS.  
 12 Do you see that?  
 13 A Yes.  
 14 Q The section itself, all right. The second  
 15 paragraph states, "Acts 43 and 44 define the State  
 16 Senate, State Assembly and Congressional districts  
 17 at the census block level. The corrected wards  
 18 and municipal boundaries deviate from the census  
 19 blocks, therefore using the corrected districts  
 20 could be interpreted as violating the statute.  
 21 However, the statute must be violated in practice  
 22 in order to give a voter the correct ballot." Do  
 23 you see that?  
 24 A Yes.  
 25 Q And the final statement that I wanted to bring to

21

1 your attention is under the Plan of Action, in  
 2 that first paragraph, the introductory paragraph.  
 3 It states, "It is critical to have the most  
 4 accurate boundary lines possible in SVRS, in order  
 5 to assure voters of their correct districts, avoid  
 6 voter and election official confusion, and to have  
 7 a manageable workflow for clerks. To reach that  
 8 goal, the technical team will use the corrected  
 9 districts wherever possible to do so. Regardless  
 10 of when these corrections occur," and then  
 11 "(pre-Spring 2012 election or after), it is likely  
 12 that the final districts will not precisely match  
 13 those prescribed by Acts 43 and 44 because census  
 14 blocks were attributed to incorrect  
 15 municipalities." Do you see that?  
 16 A Yes.  
 17 Q Can you explain to me why that plan of action was  
 18 settled upon and whether that's a plan of action  
 19 that has been followed by G.A.B.?  
 20 A It was settled upon because when we created our --  
 21 actually retooled our voter registration system  
 22 for redistricting, we used a geographic base for  
 23 all of the voters that are registered in the state  
 24 of Wisconsin. That involved using a geocode that  
 25 puts a particular address at a particular point on

22

1 the map defined by longitude and latitude, and  
 2 that would make it easier for the clerks when  
 3 they're putting voters into the system. Rather  
 4 than having to type in a list of addresses for the  
 5 particular districts, they can locate them based  
 6 on the maps that are provided to us by the  
 7 Legislature, maps that they have developed from  
 8 their municipalities or their counties.  
 9 And that allows -- so, you know, what we were  
 10 essentially doing was trying to make sure that we  
 11 had everybody in the appropriate district as  
 12 defined by the legislative districts, but the  
 13 locals have to also define it in terms of their  
 14 county, board, school district and aldermanic  
 15 districts that might impinge on them.  
 16 Q So I want to make sure -- back up a second and  
 17 make sure that I understand this. There is -- The  
 18 statutes that are passed, Act 43 and Act 44, have  
 19 district boundaries, legislative district  
 20 boundaries; correct?  
 21 A That's right.  
 22 Q So there are district boundaries under Act 43 for  
 23 Senate and Assembly districts; correct?  
 24 A That's right.  
 25 Q And then under Act 44 for congressional districts;

23

1 correct?  
 2 A That's right.  
 3 Q So those boundaries are set. There are  
 4 populations that are apportioned in each of the  
 5 specific legislative districts; correct?  
 6 A That's right.  
 7 Q How are the districts that are enacted in Acts 43  
 8 and 44 then corrected by G.A.B. under this plan of  
 9 action?  
 10 A Well, the districts aren't corrected. It's when  
 11 we put a map on top of the voter registration file  
 12 and it appears that a voter may or may not be in  
 13 the districts as it's defined, the maps will  
 14 usually create some type of an anomaly where it  
 15 doesn't seem to match up with the maps that were  
 16 provided to us by the Legislature as part of the  
 17 redistricting.  
 18 In other words, we'll have the local maps, or  
 19 the geocode doesn't line up on that, because  
 20 sometimes not all addresses have that, so there is  
 21 a default for that that takes it outside of the  
 22 municipality so they have to adjust that process.  
 23 But it's usually -- you know, what we're trying to  
 24 correct, if that's -- you know, which was the word  
 25 we used, is trying to make sure that, you know,

24



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1 with the maps there is always going to be some  
2 deviation, but since we're using that as the  
3 basis, we want to make sure that they actually  
4 line up in the district as defined by Acts 43 and  
5 44 with respect to the congressional and  
6 legislative districts. The locals have to make  
7 those decisions with respect to their county  
8 supervisors, school district and aldermanic  
9 districts, and we might have those maps but -- and  
10 they might be part of what's overlaid that creates  
11 those anomalies, but it's really just a question  
12 of when you find these ones that don't line up,  
13 because it's all done really by just placing  
14 shapes on top of the system rather than again  
15 trying to type in exact addresses, you know,  
16 trying to make the job easier for the municipal  
17 clerks by using a bigger picture, but because  
18 there are inaccuracies with the way the maps get  
19 projected, which is really what the focus of this  
20 was, it was really describing, you know,  
21 administratively the headaches that the local  
22 election officials have, which means we have too,  
23 in trying to make sure everything lines up  
24 properly, so we often have to go back to the  
25 language of the original acts or have the clerk

25

1 drill down into -- you know, if the map lines  
2 don't seem to line up with the municipal  
3 boundaries, drill down to property tax records or  
4 other things to make sure we're getting them into  
5 the area as described by the Legislature.  
6 Q So you've got the original boundaries under  
7 Acts 43 and 44; correct?  
8 A Correct.  
9 Q And those are given to the G.A.B.? G.A.B. has  
10 those?  
11 A Right, and we have them in two forms.  
12 Q All right. And the two forms are?  
13 A Well, we have the legal description in the Acts  
14 themselves and then you have file -- shape files  
15 or maps that are -- you know, that accompanied the  
16 Act and that are, you know, put into our voter  
17 registration system.  
18 Q Then there is an overlay that's put on top of  
19 those, you testified; correct?  
20 MR. HODAN: Objection. That's a  
21 mischaracterization of his testimony. You  
22 can go ahead and answer.  
23 A Those maps are actually overlaid on top of our  
24 system, you know, our voter registration system.  
25 There may be, you know -- Which goes first or

26

1 second, I'm never quite sure, but we also have --  
2 working with the municipalities, we'll get their  
3 ward maps or their municipal maps, you know,  
4 placed into that system as well.  
5 Q Is the starting place then the SVRS for the  
6 G.A.B.?  
7 A For us it's the SVRS. That's why, you know, by  
8 geocoding all of the addresses, we now have a  
9 geographic location for those addresses, rather  
10 than just, you know, a long list of addresses that  
11 are assigned to the various voting districts for a  
12 particular voter.  
13 Q Would you describe, please, for the Court what the  
14 SVRS is?  
15 A The Statewide Voter Registration System, which is  
16 often referred to as SVRS, is a system of all of  
17 the registered voters in the state of Wisconsin  
18 that we are required to maintain by state statute.  
19 It was a requirement that was imposed on the  
20 state by the Federal Help America Vote Act of  
21 2002. It's been in place in the state of  
22 Wisconsin since 2006.  
23 But it's, you know, what is used to create  
24 the poll lists for us to do various voter  
25 registration data matching, such as matching

27

1 against felons, death records, looking for  
2 duplicate registrations across municipalities.  
3 But the idea was to take the voter registration  
4 records and have them all in one place.  
5 Again, it originated from a federal  
6 requirement, but it really is the backbone of how  
7 local election officials run their system because  
8 it's what generates the poll lists and allows us  
9 to track voters and their various statuses, such  
10 as absentee voting, whether they're military or  
11 overseas voters entitled to certain requirements,  
12 so it really is what all election officials have  
13 to rely on in order to conduct their elections.  
14 Q And you testified that the SVRS is required to be  
15 maintained by the G.A.B. pursuant to statute?  
16 A That's right.  
17 Q It is also required to be made available to any  
18 member of the public pursuant to statute as well;  
19 correct?  
20 A That's right.  
21 Q If anybody from the public wants it, they need to  
22 pay some kind of a fee for it, but it is  
23 available; correct?  
24 A That's right.  
25 Q Does the SVRS change over time?

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1 A It changes every day because voters move,  
2 reregister, pass away, get convicted of felonies,  
3 come off their felon status. You know, so there  
4 is a constant change in the poll list of  
5 registered voters that are there.

6 I always say it's more than just a list  
7 because each voter has certain characteristics  
8 that go with that list that are tracked in the  
9 voter registration system and they are tied to a  
10 particular point of geography that has certain  
11 attributes in terms of, you know, what municipal  
12 ward are they in, what municipality are they in,  
13 what aldermanic district if it's a city, which  
14 school district are they in, if there is a  
15 sanitary or sewage district that elects people  
16 that's tracked, regional transit authorities were  
17 there for a while which had to be tracked, and  
18 county supervisor and congressional and  
19 legislative districts are all attributes that are  
20 tied to that particular location where a voter  
21 would be.

22 Q So at the time that the G.A.B. received Acts 43  
23 and 44 and whatever shape files or other data  
24 accompanied them, the SVRS was at a particular  
25 stage at that point in time?

29

1 A Yes.

2 Q And that changed though, as you mentioned, or as  
3 you testified, every day; is that correct?

4 A Well, the data within it changes every day.

5 Q The data within it changes every day?

6 A Right.

7 Q For the reasons that you just testified to?

8 A Right.

9 Q How did the G.A.B. then integrate the data and  
10 information that it received, when it received  
11 Acts 43 and 44, into the SVRS?

12 A Well, again, we had gone through this process of  
13 geocoding all of the addresses within SVRS. We  
14 had the shape files that were given to us from the  
15 legislative redistricting, by legislative I mean  
16 both Acts 43 and 44, so that we could then have,  
17 you know -- we could see based on the geocode  
18 location and the shape maps, and within that  
19 information municipalities had put their wards  
20 into that what we call the WISE-LR files that were  
21 provided by the Legislature. They would draft  
22 their wards, they would put those into the system,  
23 so those wards would be part of that, so that when  
24 the clerks actually were reviewing this, they  
25 could line them up based on our geocodes and the

30

1 various maps that were put into the system.

2 Q So as I understand it, and please correct me if  
3 I'm wrong, because I truly am trying to understand  
4 the cause behind these discrepancies and the  
5 effect of them, my understanding then is that the  
6 discrepancies that resulted in the preparation of  
7 these memos really are imposing one shape over  
8 another, district shape over another, one that you  
9 already had in the SVRS and then one that came in  
10 through Acts 43 and 44; is that correct?

11 A That's right, although I think the shape that's  
12 already in SVRS is really not a shape as much as  
13 it's just a point in geography based on the  
14 geocode that we received.

15 I don't know if I made it clear, but  
16 sometimes there isn't a geocode available so there  
17 is a default for that. And obviously if the  
18 geocode lands close to a line, any time you  
19 project a line, there is some distance involved in  
20 that so it could be off when you look at those  
21 shapes.

22 Q When you say the geocode, the geocode is for a  
23 boundary line or for a voter?

24 A It's for a particular address.

25 Q For an address, all right.

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1 A And the address is going to be associated with a  
2 registered voter.

3 Q Or maybe more than one registered voter?

4 A Yes.

5 Q We took yesterday the deposition of  
6 Tony Van Der Wielen of the LTSB, and  
7 Mr. Van Der Wielen provided some documents for us.  
8 I don't have copies that are marked with an  
9 exhibit identifier on them but they were marked  
10 yesterday, so I'll represent that this was marked  
11 yesterday as Exhibit No. 151. I'd like you to  
12 take a look at it, please. Have you seen  
13 Exhibit 151 before?

14 A I have seen it before.

15 Q Did you attend any meeting with Mr. Van Der Wielen  
16 or other members of the LTSB in early December to  
17 talk about the issues that are identified in  
18 Exhibit 151?

19 A I did not.

20 Q The very first paragraph of Exhibit 151, there is  
21 a question raised in the first sentence. It  
22 states, "Will the process dealing with census  
23 blocks conflicting with municipal boundaries,  
24 documented in the attached memorandum dated  
25 November 10th, 2011, change assembly or

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1 congressional lines outlined in 2011 Wisconsin  
2 Acts 43 and 44?" Do you see that question?  
3 A Yes.  
4 Q Mr. Van Der Wielen testified yesterday that the  
5 answer was given -- when he put that question to  
6 G.A.B., the answer that was given was yes, it  
7 would. Is that your understanding, that that is a  
8 correct answer to that first question?  
9 A I can't speak to that. I don't know what my staff  
10 said or how Mr. Van Der Wielen characterized that.  
11 Q Sitting here today, do you know what the answer is  
12 to that first question in paragraph number 1?  
13 A I would think the answer would be no. What we try  
14 to do is make sure that, you know, where a person  
15 is geographically is what is reflected in the  
16 statutes. The problem that we run into is the  
17 fact that when you look at the depiction of that  
18 through shape files or maps, it doesn't always  
19 come across clearly, and so the local election  
20 official, usually with some direction from us, has  
21 to figure out, how do we get them into the right  
22 place.  
23 Q All right. The second question that is asked in  
24 paragraph number 1 is "Specifically, will it  
25 change the legislative district population

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1 totals?" And again yesterday Mr. Van Der Wielen  
2 testified when he put that question to G.A.B. in  
3 December he was told the answer is yes. Do you  
4 have any knowledge about why the answer --  
5 Mr. Van Der Wielen would have been told in  
6 December that it would change legislative district  
7 population totals?  
8 A I do not.  
9 Q Sitting here today, do you know what the answer to  
10 that question is?  
11 A Well, we wouldn't know anything about district  
12 population totals as a general rule, because we  
13 only deal with voters. We don't deal with  
14 population. We don't know what the populations  
15 are in various census blocks. We only know that,  
16 you know, when we are assigned voters, we can do a  
17 count on voters in terms of, you know, who is  
18 registered or something like that, but we really  
19 have no specific knowledge about population totals  
20 and wouldn't be factoring that into that. That's,  
21 you know, for the people who draw the lines. Our  
22 job is to take care of the registered voters and  
23 make sure that they're in the appropriate  
24 district, get the appropriate ballots.  
25 Q Did you have any conversations with anyone else at

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1 LTSB about the topics identified in Exhibit 151?  
2 A I did not, no.  
3 Q Is there anyone on your staff in particular who  
4 took responsibility for working on this issue with  
5 LTSB?  
6 A Well, we have a number of staff that have to work  
7 on implementing the redistricting maps and  
8 information as they're given to us so that we can  
9 do our job, which is to get the voters into the  
10 right districts on that.  
11 Q Do you know specifically who on your staff would  
12 have --  
13 A Well, Sarah Whitt, our functional team lead, is  
14 the person who works most closely with the LTSB  
15 and works with the local election officials, and  
16 Dave Meyer is one of our IT consultants who works  
17 very closely with her because he's the one that's,  
18 you know, helping us design the geocode  
19 information, and Shane Falk is my internal staff  
20 counsel that would work with them. Ross Hein is  
21 Sarah Whitt's direct supervisor, and then  
22 Nat Robinson is Mr. Hein's supervisor and is in  
23 charge of the elections division of the agency.  
24 Q And we had identified Mr. Robinson as being the  
25 recipient of or a -- well, strike that question.

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1 The November 10th memorandum, which is  
2 Exhibit 79, appears to have been from Ms. Whitt  
3 and Mr. Falk to Mr. Robinson and Mr. Hein;  
4 correct?  
5 A That's right.  
6 MR. POLAND: Let's mark this one  
7 next.  
8 (Exhibit No. 159 marked for  
9 identification)  
10 Q Mr. Kennedy, I've handed you a copy of a document  
11 that we've marked as Exhibit No. 159. I'd like  
12 you to take as much time as you need and page  
13 through it, and then I'll have some questions for  
14 you about it.  
15 A Okay.  
16 Q Have you seen Exhibit No. 159 before?  
17 A I have seen it before.  
18 Q When did you see it?  
19 A I don't recall.  
20 Q It doesn't have a date on it from what I can see.  
21 Do you have any knowledge about when Exhibit 159  
22 was created?  
23 A I do not.  
24 Q Do you know who created it?  
25 A I am not certain who created it. I would assume

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1 that Dave Meyer would be the person most closely  
2 associated with this.

3 Q All right. Now I note that it is identified in  
4 the very front page as LTSB county shape file  
5 analysis. Do you see that?

6 A Right.

7 Q And, in fact, there is a footer on every page of  
8 this document that says LTSB county shape file  
9 analysis?

10 A That's right, so it may actually not be our  
11 document. It may be a document created --  
12 although it says G.A.B.

13 Q I believe yesterday Mr. Van Der Wielen testified  
14 that they did not -- that LTSB did not prepare  
15 this.

16 A Okay. Then --

17 Q Is Exhibit 159 anything that you asked to have  
18 created?

19 A It was something that was discussed with me. It  
20 wasn't a direction from me to have it created. As  
21 our staff was trying to work through issues where  
22 the shape files didn't line up with the geocodes  
23 and things like that, they gathered more  
24 information by getting, you know, more precise  
25 mapping from the counties, where it was available,

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1 so that they could figure out where were we having  
2 anomalies, because the different maps didn't line  
3 up.

4 Q Now there are a number of different headings and  
5 tables located throughout this document. I wanted  
6 to ask you questions about some of them.

7 If you turn to page 2 of Exhibit 159, there  
8 is a statement about voters that says, "For this  
9 part of the analysis, we looked at all active  
10 voters in each County and Geo Coded those voter  
11 addresses into the shape files from both LTSB and  
12 those received from the County GIS. This will  
13 show us how many voters were calculated per county  
14 as some of the wards using each type of shape  
15 file." Do you see that statement?

16 A Yes.

17 Q Now, there are a number of counties set out;  
18 correct? Is that correct?

19 A Yes.

20 Q All right. And there is -- The two columns on the  
21 end are the ones I wanted to draw your attention  
22 to. Do you see there is a column, the second-to-  
23 the-last column, the heading is According To  
24 County These Voters Should Be Out. Do you see  
25 that?

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1 A Yes.

2 Q And then it says, According To County These Voters  
3 Should Be In. Do you see that?

4 A Yes.

5 Q What's your understanding of what those columns  
6 represent?

7 A They represent the differences between the two  
8 shape files: The county shape file that was  
9 provided by the county and what we had in our  
10 system from LTSB.

11 Q So, for example, Barron County notified G.A.B.  
12 that 121 voters should be out of the counties or  
13 should not have been included in the county  
14 according to their records?

15 A I don't know if it was a notification or if it was  
16 when you looked at what the county depicted as was  
17 in a particular -- and I don't know which district  
18 they were analyzing this for -- you know, would be  
19 out based on -- out of the district that they were  
20 looking at based on looking at the county shape  
21 file versus looking at the LTSB shape file.

22 Q Could it have been that that's just a county total  
23 there as opposed to one of the districts  
24 specifically?

25 A That's right.

39

1 Q All right. So if we go down each of those  
2 columns, this is -- these are columns that,  
3 according to the counties, voters who should not  
4 be included in the counties and those who should  
5 be added?

6 MR. HODAN: Objection. That's a  
7 mischaracterization of his testimony.

8 MR. POLAND: Well, he can correct  
9 me if I'm mischaracterizing it.

10 A I need you to rephrase -- restate what you said.

11 Q The second-to-the-last column -- well, strike  
12 that. First of all, this reflects what G.A.B. was  
13 informed by the counties; is that correct?

14 A I don't know that the counties specifically  
15 from -- They provided data, where we ran computer  
16 analyses to decide, you know, how these matched up  
17 with the various shape files. My understanding is  
18 this is how we create exception reports, where we  
19 say, we need to make sure this voter is properly  
20 assigned. And so looking at the shape files that  
21 were provided by the county and matching them up  
22 against what the legislative lines are that are in  
23 our system from the LTSB, that's where we find the  
24 anomalies or the exceptions that we need to work  
25 with the locals to make sure that they are in the

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1 proper district, because, again, you're just using  
2 this geographic overlay to do this as opposed to  
3 using -- typing in specific addresses.  
4 Q All right. So I want to make sure that I  
5 understand, though, what these -- each of these  
6 columns represents. So whether it was the county  
7 had notified G.A.B. or whether G.A.B. simply was  
8 able to tell by looking at data that was provided  
9 by the county, it would appear, for example, in  
10 the Barron County row that according to the  
11 county's records or files that there were 121  
12 voters that were included in Barron County who  
13 should not have been included. Is that a correct  
14 interpretation?  
15 A That would be the way I would understand that.  
16 MR. HODAN: And we're talking about  
17 the shape files now, just so we're all clear.  
18 A Yes. This is all based --  
19 Q These are all the shape files.  
20 A This is all based on just looking at the maps.  
21 Q Looking at the maps, right. Understood. All  
22 right. And so for the last column in the first  
23 row, Barron County, there were 162 voters who were  
24 not included in the county under LTSB's shape  
25 files who should have been included in the county;

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1 is that correct?  
2 A Right.  
3 MR. HODAN: Let's -- I just want  
4 the record to be clear. When you say should  
5 have been, you mean according -- when you're  
6 overlaying one shape file with the other  
7 shape file?  
8 Q Yeah. It's a discrepancy between the two shape  
9 files; correct?  
10 A That's right. It's simply looking at the  
11 placement of the maps as we have them, because  
12 again we're trying to get the voters into the  
13 proper districts for voting.  
14 Q So let's take a look then at page 4. Because what  
15 we're really concerned about in this particular  
16 case has to do with the district boundaries, not  
17 so much the counties but the district boundaries,  
18 so let's look at page 4. And on page 4 do you see  
19 there is a heading that states Legislative  
20 Boundary Impact?  
21 A Yes.  
22 Q So under the legislative boundary impact  
23 discussion, the introductory language reads, "The  
24 next part of the analysis deals with the  
25 legislative boundary impact of using the LTSB Ward

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1 shape files versus the County Ward shape files";  
2 correct?  
3 A That's correct.  
4 Q It goes on to say, "We analyzed the number of  
5 voters impacted by the Assembly District, Senate  
6 District, and Congressional District Boundaries  
7 and counted the number of addresses and voters  
8 that would not be in the correct legislative  
9 boundary"; correct?  
10 A That's what it says.  
11 Q So the comparison there -- Again I want to make  
12 sure that I understand, and please correct me if  
13 I'm not characterizing this the right way. The  
14 comparison there is district boundaries using LTSB  
15 ward shape files versus county ward shape files;  
16 is that correct?  
17 A Yes.  
18 Q Now if we go to the table, there is a heading  
19 immediately above it that says Voters Impacted By  
20 Assembly District Boundary. Do you see that?  
21 A Yes.  
22 Q Then under Barron County, for example, there is a  
23 column that says Address Count - Not Found, 5;  
24 correct?  
25 A Yes.

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1 Q What is your understanding of what that number  
2 represents?  
3 A I am not sure.  
4 Q And similarly, the following column states Voter  
5 Count - Not Found. Do you know what that  
6 represents?  
7 A No, I do not.  
8 Q And just continuing down, I note that for  
9 Dane County there are 934 it appears it's voters  
10 in the column that states Address Count - Not  
11 Found; correct?  
12 A I don't know the distinction you're talking about  
13 because it says address count and you're using the  
14 term voter.  
15 Q Right. The reason why I'm using the term voter is  
16 the heading just above the table says Voters  
17 Impacted By Assembly District Boundary.  
18 A Okay.  
19 Q But you don't know what those numbers --  
20 A I don't know because it has not been explained to  
21 me what they meant by address count not found when  
22 they were matching these shape files.  
23 Q All right.  
24 A Or what they meant by voter count not found. I  
25 just know that we have in our system a list of

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1 addresses and we have in our system voters that  
2 are tied to those addresses.  
3 Q Let's turn to page 5. Do you see then there is a  
4 table at the top of page 5 that states -- the  
5 heading states Voters Impacted By Senate District  
6 Boundary; correct?  
7 A Yes.  
8 Q Then below that there is a table that  
9 identifies -- has three columns, County, then  
10 Address Count - Not Found, and Voter Count - Not  
11 Found. Do you see those?  
12 A Yes.  
13 Q There are various numbers that appear in there?  
14 A Yes.  
15 Q Can you tell me what those numbers represent?  
16 A I'd have to give you the same answer I gave you  
17 before.  
18 Q And then I'm going to ask you the same question  
19 with respect to the bottom table on page 5. It  
20 states, Voters Impacted By Congressional District  
21 Boundary; correct?  
22 A That's right.  
23 Q And there is again the similar table that  
24 identifies counties, then a column with address  
25 count not found and voter count not found?

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1 A That's right.  
2 Q And you don't know what those numbers represent  
3 either?  
4 A I can't tell you that, no.  
5 Q It appears, Mr. Kennedy, as I look through the  
6 remaining pages in Exhibit 159 that the discussion  
7 then pertains -- goes on and pertains to ward,  
8 municipal, aldermanic and county supervisory  
9 districts. Is that correct?  
10 A That's what it appears to be, right.  
11 Q Do you have any knowledge about the numbers or  
12 analyses that are portrayed in those discussions?  
13 A Nothing more than I've already told you.  
14 Q You can set Exhibit No. 159 to the side, please.  
15 Were you ever asked by LTSB or the Legislative  
16 Research Bureau to bring to the attention of the  
17 Legislature any of these anomalies that were  
18 identified?  
19 A I was not asked, no, and I'm not aware that my  
20 staff was asked.  
21 Q I was going to ask, G.A.B. Was G.A.B. ever asked?  
22 A I'm not aware that we were.  
23 Q I'm going to hand you a copy of a document that  
24 was marked as Exhibit 150 yesterday. Again, it  
25 was just marked yesterday, so we don't yet have an

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1 exhibit sticker on it. Have you seen Exhibit 150  
2 before?  
3 A Yes, I have.  
4 Q When did you see Exhibit 150?  
5 A Sometime in January.  
6 Q Was it on or about January 3rd when the memo was  
7 dated?  
8 A I honestly don't know. I'm sure -- I really don't  
9 know.  
10 Q Did you participate at all in drafting  
11 Exhibit 150?  
12 A No, I did not.  
13 Q Do you know -- Do you have any personal knowledge  
14 of the circumstances under which Exhibit 150 was  
15 prepared?  
16 A I do not.  
17 Q The very last two sentences or the last paragraph  
18 of Exhibit 150 states, "G.A.B. will assign every  
19 registered voter to a legislative and  
20 congressional district." Do you see that  
21 statement?  
22 A Yes.  
23 Q And is that a true statement?  
24 A I'm sorry, that G.A.B. will assign every  
25 registered voter to a legislative and

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1 congressional district?  
2 Q Correct.  
3 A Yes, that is a true statement.  
4 Q Then the sentence that immediately follows that  
5 states, "These may not be the same districts to  
6 which the voter was assigned by Acts 43 and 44."  
7 Do you see that statement?  
8 A I do.  
9 Q Is that a correct statement?  
10 A I don't believe it's a correct statement.  
11 Q Why do you not believe it's a correct statement?  
12 A Because, as I had mentioned before, our job is to  
13 make sure that the voters are placed in the  
14 districts as defined by Acts 43 and 44. The  
15 challenges that we have in doing that are the  
16 mismatches between the shape files, because  
17 primarily we're using initially, you know, the  
18 geographic overlays to decide where they are  
19 because that allows us to do more voters more  
20 quickly and more efficiently, and by us I refer to  
21 local election officials primarily.  
22 Q Did you have any discussions with anyone at LTSB  
23 or LRB as a result of this January 3rd memo?  
24 A I did not.  
25 Q Do you know whether anyone on your staff did?

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1 A I don't believe so. I think my staff brought this  
2 memorandum to our attention. We saw this  
3 primarily as the legislative staff or service  
4 agencies trying to deflect any problems in the  
5 matching of the shape files to us, rather than  
6 taking responsibility that the shape files didn't  
7 match up.

8 Q Did you or anyone on your staff have any  
9 discussions with anyone in the Legislature about  
10 the issues raised in the January 3rd memo?

11 A No.

12 Q Mr. Kennedy, I'm going to hand you a copy of a  
13 document that's been marked previously in this  
14 litigation as Exhibit No. 80. I know this is a  
15 document that you have seen before. Can you  
16 identify Exhibit No. 80 for the record?

17 A It is a memorandum addressed to the Wisconsin  
18 municipal clerks, the City of Milwaukee Election  
19 Commission, the Wisconsin county clerks and the  
20 Milwaukee County clerks, and it is from myself and  
21 from Nathaniel Robinson.

22 Q Exhibit 80 is a document, a memorandum, that you  
23 and Mr. Robinson prepared?

24 A It was prepared for us.

25 Q Who prepared it for you?

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1 A Sarah Whitt and Shane Falk would have been the  
2 primary persons putting this together for us.

3 Q It was prepared and sent on or about January 13th,  
4 2012; is that correct?

5 A That's right.

6 Q The subject line states Redistricting Anomalies -  
7 Municipal and Ward Boundaries. Do you see that?

8 A Yes.

9 Q Just generally speaking, that pertains to the  
10 discussion that we've been having here for the  
11 last 10 or 15 minutes or so about the  
12 November 10th memo on forward?

13 A That's right.

14 Q I would like to draw your attention to a few  
15 statements that are made in Exhibit No. 80. I'd  
16 like to have you look at page 4, please.

17 There is a heading at the top of page 4 that  
18 states Reports and Analyses of Municipal and Ward  
19 Boundaries Anomalies. Do you see that?

20 A Yes.

21 Q All right. I would like you to look down, it's  
22 the second full paragraph, and it is the  
23 second-to-the-last sentence in that paragraph.  
24 The sentence that I'm looking at reads -- well,  
25 actually for the predicate for that, let's go up

50

1 to the second sentence actually in this full  
2 paragraph.

3 This is giving an example in Rock County.  
4 The sentence I would like to draw your attention  
5 to reads, "Rock County provided a specific example  
6 of some corrections to municipal boundaries that  
7 directly conflict with census blocks and the  
8 specific statutory language of Acts 43 and 44,  
9 affecting State Assembly, State Senate, and  
10 Congressional districts." Do you see that?

11 A Yes.

12 Q Then if we go down to the second-to-the-last  
13 sentence in that same paragraph, it states,  
14 "Obviously, this situation also creates the  
15 likelihood of a shift in the population for the  
16 City of Janesville and Town of Harmony under  
17 Acts 43 and 44, which specifically attributed  
18 certain census blocks to incorrect  
19 municipalities." Do you see that statement?

20 A Yes.

21 Q Is it your understanding that those sentences both  
22 are correct statements?

23 A I don't have an understanding as to whether  
24 they're correct statements.

25 Q I'm sorry, you don't?

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1 A I do not.

2 Q Know whether they are correct statements?

3 A Right, particularly the second one. The first one  
4 I'm assuming is correct because we were working  
5 with the county to get information from them, and  
6 again those shape files would show misalignments  
7 of voters.

8 Q So as you sit here today, you don't know whether  
9 there is a shift in the population for the City of  
10 Janesville and Town of Harmony under Acts 43 and  
11 44?

12 A No, because, again, we would not know specific  
13 population issues. We would only be dealing with  
14 voters. You know, our focus on this is voters  
15 when we're dealing with this, trying to make sure  
16 that, you know, they're lined up in the  
17 appropriate districts.

18 Q Nonetheless, voters are part of the population;  
19 correct?

20 A That's right.

21 Q So it's some segment of the population that's  
22 being addressed in this memo?

23 A That's right.

24 Q It would be a -- strike that question. If we go  
25 down a little further on the same page, you will

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# VIDEOTAPE DEPOSITION OF KEVIN J. KENNEDY 2/8/2012

1 see that there are five enumerated paragraphs?  
2 A Yes.  
3 Q And the first one states, "1,266 registered voters  
4 were placed in a wrong municipality in the WISE-LR  
5 maps"; correct?  
6 A Yes.  
7 Q What are the WISE-LR maps that are being referred  
8 to there?  
9 A This is -- As I understand it, the WISE-LR maps  
10 are the maps that were provided to us by the  
11 Legislature that were built using the census  
12 blocks in their boundaries and also include the  
13 municipal ward boundaries that were put into that  
14 by the municipalities.  
15 Q Is it your understanding then that Acts 43 and 44  
16 are based on the WISE-LR maps?  
17 A My understanding is the WISE-LR maps are part of  
18 Acts 43 and 44. Those are the shape files that  
19 were -- Those are the maps that were appended to  
20 the legislation. Those were what were provided to  
21 us by the Legislature to create the overlays on  
22 our geocoding system.  
23 Q Do you know what would happen to the 1,266  
24 registered voters who were placed in the wrong  
25 municipality in the WISE-LR maps?

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1 A Well, these would be what we identify in our  
2 exception reports, where there would be a list of  
3 addresses, where the clerks would have to go in  
4 and say, why does this appear to be different and,  
5 you know, look at their municipal boundary maps.  
6 They might have to go further to see -- you know,  
7 if it shows it in the wrong municipality, they  
8 check and see, well, no, really according to our  
9 tax records they're in our municipality, and so  
10 they make sure that the voter is in the proper  
11 municipality.  
12 It's just that when you put the maps over,  
13 you know, you have projection issues with maps,  
14 you have, you know, a width issue whenever you  
15 draw a line, and we know that the underlying  
16 census data oftentimes doesn't follow the correct  
17 municipal boundaries, and that's why you see those  
18 kind of conflicts. And so, you know, when you  
19 overlay these maps and it says someone is outside  
20 of a municipality, you go back to your own  
21 evidence to say, well, wait a minute, even though  
22 the map shows them outside of the municipality or  
23 the file shows them outside, according to our tax  
24 records they are in this municipality or they're  
25 in this county and according to the description in

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1 Acts 43 and 44 this is the district they should be  
2 in based on their location.  
3 Q So let's look at this second line then where they  
4 talk about -- actually, let's jump down to the  
5 fourth line where the congressional districts are  
6 discussed. Paragraph 4, the fourth numbered  
7 sentence --  
8 A Yes.  
9 Q -- states, "12 registered voters were placed in  
10 the wrong congressional district in the WISE-LR  
11 maps." Do you see that?  
12 A I see that.  
13 Q So the 12 registered voters that are referred to  
14 in that sentence, do you know or is there a way of  
15 telling which congressional district they were  
16 placed in under Act 44?  
17 MR. HODAN: Object. Are you  
18 talking now about shape files or are you  
19 talking about the text? Let's be clear.  
20 MR. POLAND: That's fine, and  
21 that's fair. So let's break that out into  
22 two different parts.  
23 Q The 12 registered voters referred to in sentence  
24 number 4, do you know which congressional district  
25 they were placed in by the text of Act 44?

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1 A We can figure that out. This analysis is based on  
2 the maps. It is not based on -- you know, and  
3 again, as I said, we're using the mapping tool as  
4 a way to facilitate assigning the voters to the  
5 proper district, and when you have a mismatch,  
6 this is what we identify by doing this. And if we  
7 did not do this, then we would have problems when  
8 we're running the elections in 2012.  
9 So here, by laying the maps up against the  
10 county maps or the municipal maps that we have and  
11 we see that they don't line up, then we will go  
12 back to, well, what does it say for that  
13 particular address. And by we again I mean  
14 primarily the local election officials. Our staff  
15 is simply saying, you need to look at this and get  
16 it correct because according to this they don't  
17 line up. And so the municipal clerk will go  
18 through their local records to identify, because  
19 usually what it is is the problem with the map  
20 seems to show it outside of a municipality, and if  
21 you go back to the language of Act 43 and Act 44,  
22 it's very clear what parts of the city at that  
23 point in time or what parts of the county, if not  
24 the whole county, are in particular districts.  
25 It's just that when you look at the maps they

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# VIDEOTAPE DEPOSITION OF KEVIN J. KENNEDY 2/8/2012

1 don't line up, and so they have to correct that  
2 because we're using again the geography to assign  
3 it because it saves data entering in all kinds of  
4 addresses.  
5 Q So what I'm trying to figure out is -- really has  
6 to do with populations and, as we talked about  
7 before, voters are a subset of a population;  
8 correct?  
9 A I agree with the second sentence. This doesn't  
10 have to do with populations. This has to do with  
11 voters.  
12 Q Right.  
13 A What we are dealing with here is making sure  
14 voters are placed in the correct districts.  
15 You know, what the populations of the districts  
16 are, we have no idea. I mean, we can go back and  
17 look at the declaration in the statute that says  
18 what the ideal populations are or something, but  
19 our focus is when we have a voter with an address  
20 and we're looking at it using these geographic  
21 mapping tools, does it line up correctly, and if  
22 it doesn't, let's make sure that we get it there.  
23 And our reference point will come back to the  
24 language of the statutes, because we recognize  
25 that, as effective as a mapping tool is in saving

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1 you a lot of work, it also creates these issues  
2 that have to be addressed.  
3 Q And you're familiar with population equality in  
4 districts; correct?  
5 A Yes.  
6 Q All right. And is it your understanding that  
7 population equality in congressional districts  
8 needs to be -- there is obviously a legal  
9 standard, but it needs to be pretty close;  
10 correct?  
11 A Yes.  
12 MR. HODAN: Objection, calls for a  
13 legal conclusion.  
14 Q And you are a lawyer; correct?  
15 MR. HODAN: Objection.  
16 Q General counsel of the G.A.B.?  
17 MR. HODAN: Lack of foundation. Go  
18 ahead.  
19 Q You're the general --  
20 MR. HODAN: You can answer.  
21 A Yes. I'm a lawyer, and that is my understanding.  
22 I've been around elections for a while and am  
23 familiar with redistricting law.  
24 Q All right. Do you know how the populations were  
25 distributed under Act 44, the congressional

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1 districts in Wisconsin?  
2 A I do not.  
3 Q Do you know how many differences there were among  
4 the congressional districts in terms of --  
5 A In terms of what the Legislature did?  
6 Q Correct, the population.  
7 A I do not.  
8 Q Do you know how the population totals for each  
9 congressional district were determined under  
10 Act 44?  
11 A I do not.  
12 Q Do you know whether the analysis that the G.A.B.  
13 has gone through to put voters into correct  
14 districts alters the population totals as  
15 calculated by the Legislature under Act 44?  
16 A I do not know that it does that. Again, our focus  
17 is not on population. It's on placing a voter in  
18 the correct district, and the tool we use is a  
19 geographic mapping tool, and where we find  
20 exceptions to that we go back to the original  
21 source documents, which would be the language of  
22 the Acts and the records in the municipality that  
23 tell you whether they are -- you know, tax records  
24 tend to be the best records, but, you know, their  
25 county GIS systems will line up with that.

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1 Q I just want to make sure whether you know or  
2 whether you don't know. Do you know how any  
3 corrections that the G.A.B. is making to the  
4 placement of voters in congressional districts  
5 impacts the population totals as calculated by the  
6 Legislature under Act 44?  
7 MR. HODAN: I'm going to object to  
8 form.  
9 A And I don't know.  
10 Q Fair. I'd like you to turn to page number 5,  
11 please, of Exhibit No. 80. There is a heading on  
12 page number 5 there that states Districts Created  
13 by Acts 43 and 44 Conflict with Act 39. Do you  
14 see that?  
15 A Yes.  
16 Q Is that a statement that you agree with?  
17 A I am not sure I can form an opinion on that at the  
18 moment.  
19 Q All right. At the time that the memo was written  
20 on January 13th, was that a statement that you  
21 read?  
22 A Yes.  
23 Q All right. Did you agree with it at the time?  
24 A Well, my understanding was is that the local  
25 election officials to whom this is directed were

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# VIDEOTAPE DEPOSITION OF KEVIN J. KENNEDY 2/8/2012

1 having difficulties because they had the problems  
 2 with the misalignments and directions under Act 39  
 3 about when they could adjust things.  
 4 I mean there were some language issues in  
 5 Acts 43 and 44 where it would identify a census  
 6 block in a particular municipality when it was  
 7 actually in a different municipality, and there  
 8 were issues where the municipalities were looking  
 9 at the boundaries of census blocks as was  
 10 presented and it didn't match up with their own  
 11 actual boundaries, the census blocks were supposed  
 12 to be following a municipal line, and that's my  
 13 understanding of where we're talking about the  
 14 conflicts. Because Act 39 would say you can't  
 15 split a ward except under these circumstances or  
 16 you could never split a census block, and yet it  
 17 appeared to the local clerks that perhaps a census  
 18 block was already split by this misalignment of  
 19 the lines. And these are the challenges, and  
 20 that's what's really behind this statement, as I  
 21 understand it.  
 22 And our role, again, is working with the  
 23 local election officials to whom this is directed  
 24 is, you know, you have to do the best with the  
 25 information you have to make sure the voters are

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1 assigned to the correct districts. They obviously  
 2 have the local districts, school districts,  
 3 supervisory districts and aldermanic districts.  
 4 We give them the language from the Acts 43 and 44,  
 5 and that's -- you know, this is the sort of grunt  
 6 work that goes on behind the scenes to make sure  
 7 that when someone appears at the polling place  
 8 they're getting the right ballot, because they  
 9 were properly assigned.  
 10 Q The very last paragraph in that heading states,  
 11 "After the G.A.B. and/or local clerks make these  
 12 corrections, the districts in SVRS may not match  
 13 Acts 43 and 44 precisely." Do you see that?  
 14 A Yes.  
 15 Q Do you know -- First of all, do you know whether  
 16 that corrections process is completed yet?  
 17 A It's an ongoing process, so I don't believe it's  
 18 completed.  
 19 Q Do you know whether there are any districts in  
 20 SVRS that, as things stand currently, do not match  
 21 Acts 43 and 44 precisely?  
 22 MR. HODAN: Districts or are you  
 23 talking about registered voters?  
 24 Q Well, it says in the memo districts in SVRS.  
 25 A And by districts we're looking at shape files.

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1 Again, this is all focusing on using the mapping  
 2 tool. And so when you overlay the shape files  
 3 provided by the Legislature, they may not line up,  
 4 assuming that those are parts of Act 43 and 44.  
 5 But again, you know, like language, pictures are  
 6 not always accurate when you're trying to place  
 7 things, and so this problem that, you know, the  
 8 clerks are trying to work through is that when  
 9 they see the picture that's projected onto their  
 10 voters that's supposed to be Acts 43 and 44, it  
 11 doesn't line up with their reality on the ground;  
 12 well, this is our municipal boundary and Act 43  
 13 says it's in our municipality but the projection  
 14 shows it outside of it, and that's what's meant by  
 15 that statement of them not reflecting that.  
 16 You know, I think our staff is keenly aware  
 17 that if you drew a map based on our geocodes it  
 18 too wouldn't match up with the projection that  
 19 comes from the Legislature.  
 20 Q And that process, the process of making  
 21 corrections and resolving those discrepancies, is  
 22 not yet complete; is that correct?  
 23 A That's right. It's an ongoing process. I mean,  
 24 for one thing, you know, next year a new voter  
 25 registers at a new address, and it may not have

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1 our geocode assigned to it. It will have to be  
 2 placed in that situation.  
 3 But the clerks are working through --  
 4 you know, what we did again is we created what we  
 5 call an exception report where we found the  
 6 mismatches and said, please go back and make sure  
 7 that they are in the right district, and usually  
 8 the easiest way for them to do that is using their  
 9 mapping tool.  
 10 Q The next sentence goes on to state, "In addition,  
 11 these corrections also require splitting census  
 12 blocks, which may conflict with Act 39's  
 13 prohibition on splitting census blocks." Do you  
 14 know whether any census blocks at this point, at  
 15 this point, have been split as part of this  
 16 correction process?  
 17 A I don't know if they've been split. My  
 18 understanding, again, is what appears to be a  
 19 split has to do with the fact that the line that  
 20 the census block says is there is not really the  
 21 line. That if it's supposed to follow a municipal  
 22 block boundary it's not following it as they see  
 23 it on the map, and that's the issue that they have  
 24 to wrestle with. Again, it's just a very  
 25 practical on-the-ground issue.

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# VIDEOTAPE DEPOSITION OF KEVIN J. KENNEDY 2/8/2012

1 Q I'd like you to turn to page 7. And there is a  
2 statement under G.A.B. Action Plan which I think  
3 again repeats a statement that we had seen under  
4 the earlier action plan language and it's at the  
5 end of that first paragraph. It states,  
6 "Regardless of when these corrections appear  
7 (pre-Spring 2012 election or after), it is likely  
8 that the final districts will not strictly match  
9 those prescribed by Acts 43 and 44 because census  
10 blocks were attributed to incorrect municipalities  
11 or voting districts." Do you see that?  
12 A Yes.  
13 Q Understanding that what we're talking about here  
14 is shape files; correct?  
15 A Yes.  
16 Q Is that still a correct statement?  
17 A I believe that is a correct statement with respect  
18 to the lining up of the shape files and with  
19 sometimes the language inaccuracies where it says  
20 a census block is in one municipality when it  
21 really is in another, and that's just a  
22 scrivener's error that we have to deal with.  
23 Q When you say a scrivener's error, what do you mean  
24 by that?  
25 A I mean that, you know, there are some situations

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1 that appear where, according to the description it  
2 says census block X in this municipality, when  
3 it's actually in the adjoining municipality.  
4 Q Oh, I see. Okay. You can set that document to  
5 the side.  
6 MR. HODAN: We've been going for a  
7 while. Why don't we take a five-minute  
8 break.  
9 MR. POLAND: That's fine.  
10 VIDEOGRAPHER: This ends video  
11 number one. The time is 10:28 a.m. We are  
12 now off the record.  
13 (Recess)  
14 (Attorney Seligman exited the  
15 proceedings)  
16 VIDEOGRAPHER: This begins video  
17 number 2. The time is 10:41 a.m. We are  
18 back on the record.  
19 Q Mr. Kennedy, I'd like to move on and talk about  
20 some documents that G.A.B. has provided to us  
21 that, if my understanding is correct, will  
22 hopefully clear up some of the confusion that  
23 we're having over these anomalies and potential  
24 impact they might have on some of the claims  
25 brought in this case. Before I get to those

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1 documents, I want to mark and ask you a question  
2 about another document.  
3 (Exhibit No. 160 marked for  
4 identification)  
5 Q I'm handing you a copy of a document that we've  
6 marked as Exhibit No. 160. If you can look  
7 through it, and I'll have some questions for you  
8 about it.  
9 A Okay.  
10 Q You've had an opportunity to look at  
11 Exhibit No. 160?  
12 A Yes, I have.  
13 Q Have you seen that document before?  
14 A No.  
15 Q I'd like you to look at page number 10 of  
16 Exhibit No. 160. And you'll see there that there  
17 is a reference to geocode exceptions report?  
18 A Yes.  
19 Q And continuing on, on page 14 there is a reference  
20 to an address and then (boundary) exceptions  
21 report?  
22 A Yes.  
23 Q And if you look on page 20, there is a reference  
24 to a school district exceptions report. Do you  
25 see that?

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1 A Yes.  
2 Q Can you tell me what the exceptions reports are?  
3 A I'm not sure if I can tell you. I understand the  
4 concept of the exceptions reports in working with  
5 my staff. I don't -- I'm not a "SVRS user" in the  
6 sense that I have, you know, worked my way through  
7 this level. You know, we do a lot of training of  
8 our local election officials to work through these  
9 kind of issues, and obviously I have staff  
10 dedicated to that.  
11 My understanding of exception reports,  
12 particularly these ones, are these are particular  
13 issues that our system identifies when looking at  
14 the information that's provided by the  
15 Legislature, information that's provided by the  
16 localities, because again we've shifted to a  
17 geographic-based tool to assign voters to the  
18 proper districts.  
19 Q So the exceptions -- Do you have a general  
20 understanding of what the exceptions are that are  
21 created?  
22 A Yes.  
23 Q What are the exceptions, just generally speaking?  
24 A Well, an exception is when something doesn't match  
25 and the clerk needs to make a correction to make

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1 sure that the voter is assigned to the correct  
2 district, and it can be a number of different  
3 reasons that create that.

4 You know, I think I mentioned that if an  
5 address doesn't have a geocode, that is going to  
6 show up in a default location rather than within  
7 the municipality, much less within the district.  
8 Things that are close to a boundary are always  
9 going to be -- you know, the report says that you  
10 have to look at anything that's close to the  
11 boundary because you're never sure about the  
12 lining up of the maps.

13 School districts boundaries do not follow  
14 ward lines or municipal lines, and so that always  
15 creates an issue, to make sure you have the  
16 correct boundary lines. It's not unusual that  
17 municipalities don't actually know the school  
18 districts in their municipality, where those lines  
19 fall, and so as we get more and more mapping tools  
20 available, it helps them line that up.

21 Q If you would look at one of the documents we had  
22 marked before, Exhibit No. 86. It's my  
23 January 23rd letter with some attachments to it.  
24 There were some documents that were described  
25 in Exhibit 86 that were an attempt -- and this is

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1 a characterization, my characterization of what's  
2 in the letter -- were an attempt to focus what the  
3 plaintiffs had asked for in their Second Set of  
4 Interrogatories and Second Request for Production  
5 of Documents, if you look at the first page. Do  
6 you see that?

7 A Which part of the first page do you want me to  
8 look at?

9 Q Sure. We could take a look at the -- it's the  
10 second sentence of the January 23rd letter which  
11 states, "Specifically, we have agreed to make a  
12 preliminary attempt to narrow and focus the scope  
13 of documents and information sought in Plaintiffs'  
14 Second Set of Interrogatories and Second Request  
15 for Production of Documents." Do you see that?

16 A Yes.

17 Q Then there are -- The next sentence down after  
18 that paragraph says, "We provide the following  
19 initial descriptions of documents and information  
20 that we are seeking"; correct?

21 A Yes, that's right.

22 Q And it identifies seven categories; correct?

23 A Yes.

24 Q Did the G.A.B. subsequently provide responses to  
25 the Plaintiffs' Second Set of Interrogatories and

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1 Second Request for Production of Documents?

2 A Yes, we did.

3 MR. POLAND: Let's go ahead and  
4 mark this.  
5 (Exhibit No. 161 marked for  
6 identification)

7 Q Mr. Kennedy, I'm handing you a copy of what we've  
8 marked as Exhibit No. 161. Can you identify  
9 Exhibit No. 161 for the record, please?

10 A It is identified as Defendants' Responses to  
11 Plaintiffs' Second Set of Interrogatories and  
12 Second Request for Production of Documents.

13 Q If you'd turn to the last page of Exhibit No. 161.  
14 Is that your signature?

15 A Yes.

16 Q And you signed the verification on or about  
17 February 2nd, 2012?

18 A Yes.

19 Q Did you have any input into the preparation of the  
20 responses in Exhibit No. 161?

21 A I had some input, yes.

22 Q I'd like you to turn to page 6 of Exhibit No. 161.  
23 Actually the previous page identifies -- the  
24 answer that's on page 6 is identified as being in  
25 response to Interrogatory No. 10. Do you see

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1 that?

2 A Yes.

3 Q Did you have input into the response to  
4 Interrogatory No. 10?

5 A I did.

6 Q The second paragraph down in the answer states,  
7 "Defendants are not certain precisely when they  
8 first became aware of errors with the 2010 Census  
9 TIGER lines, but it was certainly after the  
10 redistricting maps were enacted into law." Do you  
11 see that?

12 A Yes.

13 Q Is it fair to say that the discrepancies that  
14 we've been talking about or anomalies did not come  
15 to G.A.B.'s attention until after Acts 43 and 44  
16 were enacted into law?

17 A That's right.

18 Q I'd like you to turn to page 7, please.  
19 Interrogatory No. 11 asks for the names of every  
20 person with whom any G.A.B. member or employee has  
21 communicated about the anomalies referenced in  
22 Interrogatory No. 10. And I note in the answer  
23 that there are no names that are actually given.  
24 Do you know the names of the people at G.A.B. who  
25 would be responsive to Interrogatory No. 11?

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# VIDEOTAPE DEPOSITION OF KEVIN J. KENNEDY 2/8/2012

1 MR. HODAN: I'm going to object to  
2 the question, in part because the parties  
3 discussed the request, and, as we had  
4 previously indicated, there were some 1,851  
5 municipal clerks, 72 county clerks, countless  
6 GIS specialists from various counties who  
7 would have had some contact or another with  
8 respect to these exception reports that were  
9 created. We -- in informal discussions the  
10 plaintiffs' counsel indicated that you  
11 weren't looking for the information regarding  
12 names of all of the clerks and all of the  
13 GIS folks, and you subsequently sent a  
14 January 23rd, 2012 correspondence.  
15 So to the extent you want him to  
16 identify every one of those 1,851 clerks,  
17 72 county clerks, the GIS people, Milwaukee  
18 Election Commission people, feel free to ask  
19 him, but it was our understanding that  
20 that's, in fact, what you were not looking  
21 for.  
22 MR. POLAND: No, that's a fair  
23 statement, Patrick. We were not. We did  
24 have the follow-up letter. We were not  
25 looking for all of the communications with

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1 clerks and everyone else.  
2 Q So I can narrow the question to exclude certain  
3 groups of people: Clerks, GIS specialists,  
4 whether they were county or municipal clerks, GIS  
5 specialists, not looking for the back-and forth  
6 communications between G.A.B. and county clerks  
7 over particular implementation of -- or attempts  
8 to resolve the anomalies or the discrepancies,  
9 looking more about communications that G.A.B.  
10 would have had with legislators, with counsel who  
11 are not counsel to G.A.B. in this litigation.  
12 MR. HODAN: You can go ahead and  
13 answer.  
14 Q Yeah, I think that's probably it.  
15 A By counsel, are you referring to the people on our  
16 staff? Because obviously I have two staff  
17 attorneys and a number of people on my staff who  
18 are attorneys who don't serve as attorneys.  
19 MR. HODAN: He's referring to  
20 counsel outside of the G.A.B. or our firm or  
21 the DOJ. Have you talked to any other  
22 lawyers.  
23 Q Correct.  
24 A No.  
25 Q What about legislators?

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1 A I'm certain that there were probably some  
2 legislative inquiries saying, *What is this all*  
3 *about*, where we tried to explain again this high  
4 level of the maps not matching and trying to  
5 assign people to the district, but it wouldn't  
6 have been -- that would have only been that,  
7 because we would get -- you know, I think there  
8 might have been a contact saying, you know, *Our*  
9 *county clerk is upset*, would you talk to her.  
10 Those kind of contacts, if they were legislators,  
11 were difficult to even keep track of those, but  
12 again they only went to how do we resolve this  
13 issue.  
14 Also obviously our media person would talk to  
15 our staff and then answer questions about the news  
16 articles that came in. Again, all very high  
17 level, to simply explain that, you know, this was  
18 working through the anomalies we discover and that  
19 this is a normal part of redistricting, that you  
20 have to make sure that, you know, the voters are  
21 correctly assigned to the right districts and that  
22 the tool we use -- you know, I mean most of these  
23 clerks are part-time, so, you know, all of a  
24 sudden they walk in. From the prior exhibit you  
25 saw all of the computer screens they have to go

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1 through and things like that. You know, they need  
2 a lot of hand-holding to do this, and this is not  
3 their day job and they come in and they need some  
4 assistance, so they're going to be frustrated,  
5 they're going to express those frustrations to  
6 their legislators, to the press on that. So,  
7 you know, we would sometimes have to do some of  
8 that kind of response that -- you know, and help  
9 put it into perspective that this is just part of  
10 the maintenance that goes on in a voter list, that  
11 it's not just a list of names.  
12 You know, as I said, those names have  
13 attributes and they're tied to a location that has  
14 attributes and those things shift significantly  
15 with redistricting, so you have to make sure that  
16 they're accurate.  
17 Q In terms of communications with legislators, did  
18 anyone from the Legislature ever contact the  
19 G.A.B. and ask whether the resolution of the  
20 anomalies changed any of the districts or district  
21 assignments in any way?  
22 A Not that I'm aware of, no.  
23 Q I'd like you to look on page 7 of Exhibit 161,  
24 Interrogatory No. 12. You'll see that asks,  
25 "Explain how, if at all, the 'anomalies' affect

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1 the population variations from precise equality  
2 reflected in the districts, whether legislative or  
3 Congressional, embodied in Acts 43 and 44."  
4 Then the answer, there is an objection, and  
5 then the next sentence reads, "Subject to and  
6 without waiving these objections, defendants have  
7 no evidence that the 'anomalies' impact population  
8 variances in Acts 43 or 44." Do you see that?  
9 A Yes.  
10 Q Did you contribute to the formulation of that  
11 answer?  
12 A It was reviewed with me, yes.  
13 Q Did you draft or prepare that particular  
14 statement?  
15 A It was drafted by our attorneys.  
16 Q Did you do anything -- Do you agree with that  
17 statement?  
18 A I do.  
19 Q Did you do anything to verify that there is --  
20 strike that question. What did you do to verify  
21 that there was no evidence the anomalies impact  
22 population variances in Acts 43 and 44?  
23 A Well, we sat down with our attorneys and with  
24 other members of the staff and looked at the list  
25 of congressional exceptions that we had identified

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1 in our analysis and were able to determine that  
2 the exceptions when we corrected them put them  
3 into the districts that were properly associated  
4 with Act 44, since it was the congressional  
5 districts.  
6 Q I'd like you to turn to page -- the next page,  
7 Interrogatory No. 13. Did you contribute to  
8 preparing the response to Interrogatory No. 13?  
9 A I read it, but I did not prepare the response.  
10 Q You didn't contribute any of the names that are  
11 identified?  
12 A No. No. Again, our agency had absolutely no role  
13 in the preparations of what became Acts 43 and 44.  
14 Our role simply came in that we had to administer  
15 it once it became law.  
16 MR. POLAND: I need to go off the  
17 record for a minute.  
18 VIDEOGRAPHER: The time is  
19 11:00 a.m. We are now off the record.  
20 (Discussion held off record)  
21 (Attorney Earle entered the  
22 proceedings)  
23 (Exhibit No. 162 marked for  
24 identification)  
25 VIDEOGRAPHER: The time is

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1 11:15 a.m. We are back on the record.  
2 Q Mr. Kennedy, I've handed you a document that we  
3 have marked as Exhibit No. 162. Do you have that  
4 in front of you?  
5 A Yes, I do.  
6 Q I would like you to turn to -- Before I ask you a  
7 question, have you seen Exhibit No. 162 before?  
8 A I have.  
9 Q Identify Exhibit 162 for the record, please.  
10 A It is described on the second page as Defendants'  
11 Supplemental Answers to Plaintiffs' First Set of  
12 Interrogatories and First Request for Production  
13 of Documents.  
14 Q Would you turn to page 29 of Exhibit 162, please.  
15 A Yes.  
16 Q Is that your signature on page 29?  
17 A It is.  
18 Q On the verification page?  
19 A Yes, it is.  
20 Q Did you review Exhibit 162 before you signed the  
21 verification page?  
22 A I did.  
23 Q To your knowledge are all of the responses in  
24 Exhibit No. 162 true and correct?  
25 A They are.

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1 Q Did you participate in drafting the responses that  
2 are contained within Exhibit 162?  
3 MR. HODAN: Objection. Just so  
4 we're clear, there are some original answers  
5 and there are some supplemental answers, and  
6 just so the record is clear, maybe you can  
7 direct him to a particular request that  
8 you're interested in so that we don't get  
9 confused.  
10 Q I appreciate the clarification, and that is a fair  
11 characterization, that Exhibit 162 does contain  
12 responses that we also saw in Exhibit 161, and  
13 then it contains some supplemental responses;  
14 correct?  
15 A Yes.  
16 Q And so I want to limit my questions simply to the  
17 supplemental answers. Did you participate in  
18 drafting any of the supplemental answers contained  
19 in Exhibit 162?  
20 A I was consulted by my attorneys and reviewed them  
21 and made some suggestions.  
22 Q Are there any particular -- As you sit here today,  
23 are there any particular interrogatories that you  
24 participated in preparing the supplemental  
25 response to?

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1 A I couldn't tell you without going through each and  
2 every interrogatory.

3 Q I'd like you to turn to page 9. Drawing your  
4 attention to Interrogatory No. 5, and more  
5 specifically the supplemental answer, I'd like you  
6 to turn to the next page, page 10, where that  
7 supplemental answer continues.

8 Did you contribute to preparing the statement  
9 that begins on the second line of page 10 that  
10 states, "Defendants further answer by stating the  
11 following," and then through the end of that  
12 paragraph? Did you contribute to that answer?

13 A No.

14 MR. HODAN: Doug, for the record,  
15 just to move this along, since the G.A.B. had  
16 no involvement and Mr. Kennedy has testified  
17 that they had no involvement in the map  
18 drawing process or anything involving the  
19 maps prior to their enactment, anything  
20 related to that in response to this he would  
21 have reviewed but would not have -- as his  
22 verification indicates, he would have had to  
23 rely on the assistance and advice of counsel.

24 It looks like most of the supplemental  
25 responses relate to your questions about the

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1 map drawing process, rather than the  
2 implementation.

3 MR. POLAND: I believe that's  
4 right, and that's the questions -- that was  
5 essentially the line of questioning I was  
6 going to ask. All right. So that's fine.  
7 With that clarification, that's fine.

8 A Okay.

9 Q Set that aside. Mr. Kennedy, there were a number  
10 of documents that were produced along with  
11 Exhibit No. 162 to us, and I'm hoping that we can  
12 look at these documents and that these might  
13 address some of the questions that we had about  
14 anomalies.

15 MR. POLAND: Let's go ahead and  
16 just mark these, and then I'll provide copies  
17 to counsel.

18 (Exhibit Nos. 163-165 marked for  
19 identification)

20 MR. POLAND: I've got other copies  
21 for counsel, and I'll distribute them. 163,  
22 164 and then 165.

23 THE WITNESS: That's the  
24 congressional?

25 MR. HODAN: Yeah, that's right.

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1 That's the Senate and that's the  
2 congressional. The Assembly.

3 MS. LAZAR: I think you have the  
4 copies to be circulated.

5 MR. HODAN: Pardon me?

6 MR. POLAND: You have copies too?

7 MR. HODAN: I have my originals.

8 MS. LAZAR: Never mind. Is this  
9 one set? Yeah, it is.

10 MR. POLAND: They're folded up.  
11 There is one for you.

12 MR. HASSETT: Is this three  
13 exhibits?

14 MR. POLAND: It is three separate  
15 exhibits.

16 Q Let's make sure we're on the same page here. 163  
17 marked as congressional, okay.

18 MR. HODAN: The congressional  
19 exception report.

20 Q Then 164 we marked the Senate.

21 A Yes.

22 Q Then we've got 165 which is the Assembly.  
23 Mr. Kennedy, I'd like to ask you to look at  
24 Exhibit No. 163. I'll note for the record that it  
25 has Bates numbers G.A.B. 55 on the first page and

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1 56 on the second page. Have you seen Exhibit 163  
2 before?

3 A Yes, I have.

4 Q What is Exhibit 163?

5 A This was prepared by our counsel based on the  
6 information that we provided them.

7 MR. HODAN: Correction. Let's  
8 correct the record.

9 THE WITNESS: Okay.

10 MR. HODAN: We didn't prepare this.

11 THE WITNESS: We didn't? Okay.

12 MR. HODAN: You guys did.

13 THE WITNESS: I thought this was  
14 your recharacterization of this.

15 MR. HODAN: No.

16 THE WITNESS: Okay.

17 Q Mr. Kennedy, is it your understanding that the  
18 G.A.B. prepared Exhibit 163?

19 A That's my understanding.

20 Q Do you know whether it was prepared at the request  
21 of counsel?

22 A I believe it was.

23 Q Was that in response -- To your knowledge, was  
24 that in response to the plaintiffs' request for  
25 information pertaining to the anomalies?

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1 A Yes.

2 MR. HODAN: Maybe I can shortcut

3 this and help everyone. You were asking

4 questions before -- Let's go off the record,

5 please.

6 VIDEOGRAPHER: The time is

7 11:23 a.m. We are now off the record.

8 (Discussion held off record)

9 VIDEOGRAPHER: The time is

10 11:25 a.m. We are back on the record.

11 Q Mr. Kennedy, before we continue with looking at

12 Exhibit 163, I wanted to ask you about Exhibit

13 No. 80, and that was the January 13th memorandum.

14 A Okay.

15 Q Drawing your attention to page 4 of the

16 January 13th memo, there is a reference down

17 toward the bottom of the page. There is a

18 paragraph that starts out, "The G.A.B. conducted a

19 more comprehensive analysis of 16 counties to

20 include district lines," and it continues on from

21 there. Do you see that?

22 A Yes.

23 Q There is a 16-county analysis that G.A.B.

24 conducted; is that accurate?

25 A Yes.

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1 Q Do you know whether the exception reports that

2 were created or are embodied in Exhibits 163, 164

3 and 165 were created as part of that study?

4 A That is my understanding, yes.

5 Q And they were created by the G.A.B.?

6 A Yes.

7 Q All right. I'd like you to look at Exhibit

8 No. 163. Can you identify this document, please?

9 A This appears to be the congressional exception

10 report that came out of that study.

11 Q Now, just generally speaking, and then we'll go

12 through -- we can go through some of the columns

13 themselves, but generally speaking, what does

14 Exhibit 163 show or what is the purpose of

15 Exhibit 163?

16 A Well, it shows a list of counties with

17 municipalities, ward numbers and congressional

18 district numbers, voter numbers, addresses for

19 voters, both the street address and their

20 municipality with post office, and address

21 identification and the names of the voters, as

22 well as a listing of which district the shape --

23 what appears to be the LTSB congressional district

24 shape files put them in.

25 Q Now, what is the exception that is portrayed in

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1 Exhibit 163?

2 A Well, if you -- you know, the list of

3 congressional districts that's in the fourth

4 column over generally is different from the one in

5 the final column, and that would be where you

6 would have an exception.

7 Q Do you know the total number -- There is no

8 listing or enumeration in any of the columns of

9 the number of exceptions that are contained within

10 Exhibit 163.

11 A I don't.

12 Q Do you know offhand? You don't. Let's look at

13 that first column that you identified that says

14 congressional district. So this appears to be the

15 one, two, three, fourth column from the left-hand

16 side of Exhibit 163?

17 A Yes.

18 Q What congressional district is portrayed in that

19 column?

20 A That's the district where we would have placed the

21 voter in SVRS, meaning the Statewide Voter

22 Registration System.

23 Q What date is that congressional district measured

24 as of?

25 A I believe this is a reflection of the current

87

1 congressional districts that were enacted under

2 Act 44.

3 Q It's your understanding, then, that those are the

4 congressional districts where Act 44 places those

5 voters?

6 A Well, that's where we have them listed in SVRS,

7 and it's supposed to be a reflection of what

8 Act 44 places the voters.

9 Q Your understanding then is that both -- let's just

10 take, for example, the first voter who is

11 identified as being in Town of Vienna, second

12 ward, Congressional District 2, and there is a

13 voter registration number there.

14 A Right.

15 Q And the last three digits are 017. Do you see

16 that?

17 A Yes.

18 Q All right. Is it your understanding that that

19 voter was placed into Congressional District 2

20 under Act 44 and in the SVRS?

21 A Yes.

22 Q All right. Now I'd like to continue over to the

23 far right-hand column. The header is LTSB

24 Congressional District. Do you see that?

25 A Yes.

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1 Q What does that column reflect?

2 A My understanding is that reflects the shape file

3 when it's imposed over our data that suggests that

4 the voter might be in Congressional District 6.

5 Q So to summarize, and again, correct me if I'm

6 misstating anything because I want to make sure

7 that I get this right, the LTSB shape file

8 would have placed that voter in Congressional

9 District 6; is that correct?

10 A That's right. Looking at the shape file, it would

11 not line up with District 2. It would line up

12 with District 6.

13 Q So under the LTSB's shape file --

14 A Right.

15 Q -- that particular voter would have been in a

16 different congressional district than that voter

17 was counted in under Act 44; is that correct?

18 MR. HODAN: Objection to form. And

19 you're talking about two different issues,

20 and I just want to make sure we're clear.

21 You're talking about shape files, and

22 then you're talking about county. Those are

23 two different propositions. And this isn't

24 intended as a -- isn't intended as a walking

25 objection. I just want to make sure we're

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1 clear on that, because you were mixing apples

2 and oranges in your question.

3 MR. POLAND: That's fine, and

4 Mr. Kennedy can correct me. I truly do want

5 to understand this.

6 Q Under the LTSB shape file, which I understand is a

7 shape file, if the LTSB's shape file were used, if

8 that particular voter was assigned to a district

9 pursuant to the LTSB shape file or in accordance

10 with, would that voter have been assigned to or

11 considered to be assigned to Congressional

12 District 6?

13 A If you're relying just on the LTSB congressional

14 district shape file, yes.

15 Q All right. Now, for the purposes of actually

16 voting, when that voter goes to cast a ballot,

17 will that voter cast a ballot in Congressional

18 District 6 or Congressional District 2?

19 A Well, the ballot will be issued based on the

20 Statewide Voter Registration System, and we've

21 placed them in Congressional District 2 after

22 looking at this exception, because, again going

23 back to the Act, we can see that all of

24 Dane County is in Congressional District 2 and

25 that the depiction that came from the shape files

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1 was incorrect, and that's the purpose of creating

2 these exception reports is to line them up so that

3 they get assigned to the correct district.

4 Q So it's your understanding that for the fourth

5 column from the left-hand side, congressional

6 district, each of the voters that's identified in

7 there as being assigned to a particular

8 congressional district will actually vote in that

9 district identified in that column?

10 A Based on the information that's in front of us.

11 Obviously it could change. The voter could move.

12 But based on this information, if the

13 election were today and they showed up at the

14 polling place served by this ward, they would get

15 the ballot because their name would show up on the

16 list.

17 Q Fair enough, and I understand that. Turning to

18 the last column, which is the LTSB congressional

19 district column, which identifies congressional

20 districts different than the districts that are

21 identified in the congressional district column to

22 the left, what use, if any, will the G.A.B. make

23 of the information contained in that column?

24 A Well, this is simply a report that assists the

25 municipalities to help them resolve the

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1 discrepancies. So it's just something between us

2 and the municipalities.

3 You know, we run this exception report. Each

4 municipality has a list, you know. Obviously the

5 Town of Vienna would get two names off this list,

6 and the clerk would check to make sure that in

7 their -- the district combination that's assigned

8 that voter that it's not 6, that it's actually 2.

9 Q So if I understand this correctly, Exhibit 163

10 correctly, and again, let's just stick with that,

11 one voter we identified in the top row there with

12 the last three digits 017, if we were to go and

13 look at Act 44 and we were to look at where that

14 particular voter was counted or which

15 congressional district that voter was counted as

16 being in under Act 44, that should match up with

17 where that voter is expected to vote or intended

18 to vote when the voter goes to cast a ballot for

19 their congressional election; is that correct?

20 A Well, except for we don't know where they were

21 counted. We know that the address that's assigned

22 to this voter is in the Town of Vienna, which is

23 in Dane County, and if we get an exception report

24 that says it's in District 6, we say, no, it's in

25 District 2. We need to make sure that they are

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1 properly assigned based on Act 44, and it's based  
2 on the address. We don't know where they're  
3 counted. We only know that this address falls  
4 within the description of Congressional District 2  
5 in Act 44.

6 Q And that's why you said for population purposes.  
7 And I recognize we're talking population versus  
8 voters. For population purposes, you don't know  
9 whether that voter was being counted as being in  
10 District 2 under Act 44 or was not counted as  
11 being in District 2?

12 A That's right. We would have no knowledge of that.

13 Q I'd like you to take a look at Exhibit 164,  
14 please. Can you identify Exhibit 164 for the  
15 record, please?

16 A This appears to be the Senate district exception  
17 report created from that study.

18 Q So we have, in the fourth column from the left, a  
19 column with the heading Senate district; correct?

20 A Yes.

21 Q If I -- Your testimony about the congressional  
22 districts, does that hold true for this column in  
23 Exhibit 164 with respect to Senate districts?

24 A Yes.

25 Q So in other words, this column, this fourth from

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1 the left column, indicates the Senate district  
2 that you have for each of these voters in SVRS --

3 A Yes.

4 Q -- currently?

5 A That's my understanding, yes.

6 Q And your belief is that that coincides -- or your  
7 testimony is that it's your understanding that  
8 coincides with the Senate districts to which these  
9 voters were assigned under Act 43?

10 A What their address would be assigned to, yes.

11 Q Their addresses would be assigned to, all right.

12 Then the last column on Exhibit 164, which is  
13 headed LTSB Senate district, again that is the  
14 Senate district to which the shape file that LTSB  
15 transmitted to you would have placed these  
16 particular addresses?

17 A Yes.

18 MR. HODAN: Just to the extent it  
19 was overlaid against the SVRS map, just so  
20 we're clear. You keep saying this is where  
21 LTSB placed them. It's the overlay.

22 Q If you were to look at the LTSB shape file and you  
23 were to overlay it over where these addresses are,  
24 this address -- according to LTSB's shape file,  
25 these addresses would have been in the Senate

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1 districts portrayed in the right-hand column of --

2 A When it's overlaid against our system, yes.

3 Q Yes, all right. And then finally, Exhibit  
4 No. 165, could you identify that for the record,  
5 please?

6 A This appears to be the Assembly district exception  
7 report created by the study that we'd referenced  
8 earlier.

9 Q So, again, fourth column from the left we have a  
10 column with the heading Assembly district;  
11 correct?

12 A That's right.

13 Q And that is the Assembly district to which you  
14 have assigned addresses under SVRS?

15 A That's right.

16 Q And your understanding is that that also is the  
17 same Assembly district to which each of these  
18 addresses was assigned under Act 43?

19 A Yes. That's my understanding.

20 Q All right. And the final column again, LTSB  
21 Assembly district, as we just discussed a minute  
22 ago, that is the LTSB Assembly district into which  
23 each of these addresses would fall when you  
24 overlay the LTSB's shape file over your data?

25 A Yes.

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1 Q Mr. Kennedy, you can set those aside. I want to  
2 move to a different topic. What is the timing --  
3 or I would like to address the timing for the  
4 general elections to be held next fall. What is  
5 the general election date for next fall?

6 A The general election is the Tuesday after the  
7 first Monday in November. I'm not sure exactly  
8 what that date is without consulting a calendar.

9 Q That's all right. That's not -- That kind of  
10 precision isn't important for my purposes. There  
11 will be primary elections held for those general  
12 elections; correct?

13 A That's true.

14 Q Do you know when the primary elections will occur?

15 A That will be the second Tuesday in August, which I  
16 know is August 14th, of 2012.

17 Q Now, people who want to get on the ballot for the  
18 primaries need to circulate petitions; correct?

19 A Nomination papers, we call it.

20 Q Nomination papers. Is there a deadline for  
21 potential candidates to circulate nomination  
22 papers?

23 A They can start circulating them on April 15th, and  
24 they must be filed in our office no later than  
25 5:00 p.m. on June 1st, unless June 1st happens to

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1 be a weekend, which I don't recall.  
2 Q Is there any flexibility with the date, the  
3 deadline for filing nomination papers with the  
4 G.A.B.?  
5 A It's set by statute.  
6 Q Can the G.A.B. alter that or change it?  
7 A No.  
8 Q Has the deadline for nomination papers to be  
9 submitted ever been changed before?  
10 A Yes, it has. But to put it into context,  
11 you know, the primary date was changed through  
12 legislation that was enacted, so it went from the  
13 second Tuesday in September to the second Tuesday  
14 in August, which required a shift in dates. We've  
15 had different dates since the time Wisconsin  
16 adopted a primary system in the early 1900s. I  
17 couldn't tell you specifically what they were, but  
18 there were adjustments made over the time. I  
19 couldn't go back and -- I wasn't there for most of  
20 them.  
21 Q If a change were to occur with the current  
22 June 1st deadline, that would have to be done by  
23 the Legislature; is that correct?  
24 A By the Legislature or a Court.  
25 Q Now how about the recall elections that are

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1 scheduled to be held this spring? There is a  
2 deadline for objections; correct?  
3 A Well, there are no recalls scheduled. They won't  
4 be scheduled until our agency reviews the  
5 petitions, reviews all of the challenges,  
6 responses and replies, and makes a determination  
7 based on the staff analysis of its own review, as  
8 well as that, whether or not the petitions are  
9 sufficient.  
10 Q Fair enough, and I appreciate the correction  
11 there. When is the deadline for objections to the  
12 recall petitions that have been submitted?  
13 A Challenges deadlines have been set by the Court.  
14 My understanding, and I'm not exactly sure of the  
15 time period, but I do know that the four Senate  
16 petitions have to file their objections by  
17 Thursday, February 9th. The two statewide have  
18 30 days from the time that we gave them the copies  
19 of the petitions after we had scanned them, and  
20 I'm not sure what those dates are. I believe it's  
21 the end of February and early March for the  
22 governor and lieutenant governor, respectively.  
23 Q So the challenges at least for the Senate recall  
24 elections or for the -- strike that question.  
25 The deadline then to submit challenges to the

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1 recall petitions that have been submitted for  
2 the -- for any Senate recall elections is  
3 tomorrow; is that correct?  
4 A Yes.  
5 Q Coming up quickly. When do you expect to set an  
6 election date for recall elections?  
7 A I don't know.  
8 Q Is there any date by which you expect to make some  
9 kind of a determination about when the recall  
10 elections will be held?  
11 MR. HODAN: I'm going to object.  
12 Do you mean when he or the board?  
13 Q The G.A.B. The G.A.B.  
14 A The Court has told us at this point to complete  
15 our examination and determination by March 19th.  
16 Q Do you expect that by March 19th the G.A.B. will  
17 make a determination about when recall elections  
18 will be held if the petitions withstand the  
19 challenges?  
20 A There are a lot of variables, so I'm not certain  
21 on that. As we indicated, the challenges are due  
22 tomorrow. The petitioners can respond to that,  
23 then the replies. Our staff has to go through  
24 that, along with its own analysis, and prepare a  
25 report for the board. We have to schedule a board

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1 meeting. None of that has been completed. It  
2 depends on board member availability. It depends  
3 on the scope of the challenges. I don't know how  
4 long that will be.  
5 So until we set a board meeting to hold that  
6 hearing, you know, and there is a lot of interest  
7 in trying to coordinate the timing because we have  
8 four elections set already this year, February,  
9 April, August and November, and there is a big  
10 impact on administering these elections.  
11 So, you know, we will be talking to the Court  
12 about timing. Obviously the office holders and  
13 the petitioners have their own views on what  
14 timing would best facilitate the election.  
15 You know, our focus is to get the job done that's  
16 in front of us and move it as quickly as possible  
17 within the statutory timeframes and the extensions  
18 that the Court has already given.  
19 Q Is there any range of dates at all that the G.A.B.  
20 has discussed for when it anticipates any recall  
21 elections might be held?  
22 A I think before the petitions were filed there was  
23 speculation that if things went smoothly that we  
24 would see elections sometime after the end of  
25 April but hopefully before the middle of June.

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# VIDEOTAPE DEPOSITION OF KEVIN J. KENNEDY 2/8/2012

1 Again, you know, now that we're in the midst  
2 of this, it's all dependent on what the workload  
3 is and what extensions the Court gives, what the  
4 findings are that the board makes, and even after  
5 the board makes a finding of sufficiency, that can  
6 be challenged in Court and that could end up  
7 delaying the election process.

8 Q Mr. Kennedy, has the G.A.B. issued any opinions on  
9 when the legislative districts created by 2011  
10 Wisconsin Act 43 take effect for the general  
11 election?

12 A Yes.

13 Q And what is the opinion that the G.A.B. has issued  
14 on that issue?

15 A Well, I should back up and say we were asked a  
16 question about when they would be in effect for  
17 any recall elections that might occur before the  
18 Tuesday after the first Monday in November, and so  
19 the board addressed that issue first. It was a  
20 response that was -- that I prepared, which the  
21 board later ratified. So it focused primarily on  
22 any recall or special elections.

23 The language of the Act is pretty clear that  
24 with respect to the regularly scheduled elections  
25 for legislative and congressional districts the

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1 boundaries for Acts 43 and 44 would be in place in  
2 November and also for the August primary.

3 Q And what was the opinion that you issued for the  
4 recall or special elections?

5 A Well, reading the language of Acts 43 and 44, it  
6 appeared clear to us and consistent with prior  
7 opinions of the Attorney General that we had  
8 looked at that any recall or special elections  
9 that were conducted between the time that we  
10 issued the opinion and November 12th -- or in  
11 November would have to be under the districts that  
12 existed before Acts 43 and 44, because the  
13 language again was very specific in Acts 43 and 44  
14 that they would be held under those boundary  
15 lines.

16 MR. POLAND: Let's go ahead and  
17 mark this as Exhibit 166.  
18 (Exhibit No. 166 marked for  
19 identification)

20 Q Mr. Kennedy, I'm handing you a copy of a document  
21 that we've marked as Exhibit No. 166. I'd ask you  
22 to take a look at that, please. Have you had an  
23 opportunity to look at Exhibit 166?

24 A Yes, I have.

25 Q I'd like you to turn to the second page of

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1 Exhibit No. 166. Can you identify that document?

2 A This is a guideline prepared by the Government  
3 Accountability Board staff that reflects the  
4 action taken by the Government Accountability  
5 Board at its November 9th, 2011 meeting.

6 Q To your knowledge are the statements that are made  
7 on that particular page accurate?

8 A Yes.

9 Q I'd like to turn your attention to the paragraph  
10 that starts off with the bold heading When do the  
11 new districts take effect for elections? Do you  
12 see that?

13 A Yes.

14 Q The very last sentence of that paragraph states,  
15 "Any special or recall election for a state office  
16 held before this date will reflect the previous  
17 district lines." Do you see that?

18 A Yes.

19 Q And the reference there to "this date" refers back  
20 to the general election date of November 6, 2012;  
21 correct?

22 A That's correct.

23 Q The reference to previous district lines, what  
24 does that refer to?

25 A Those would be the district lines that were in

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1 effect before Acts 43 and 44 were enacted.

2 Q Those were the district lines drawn by the Court  
3 in 2002; is that correct?

4 A That's correct.

5 Q I'd like you to turn to the next page of  
6 Exhibit 166, and that appears to be a memorandum.  
7 The date says for the meeting of November 9th,  
8 2011, to the members of the G.A.B. from you;  
9 correct?

10 A That's correct.

11 Q Is this a memorandum that you prepared?

12 A It is a memorandum that I prepared.

13 Q Did you prepare it on or around November 9th,  
14 2011?

15 A It would have been prepared before that time so it  
16 could be distributed to board members.

17 Q Why did you prepare the memorandum here before the  
18 meeting of November 9th, 2011?

19 A Because the staff had issued an opinion in  
20 response to questions from legislative clerks.  
21 Obviously not everyone agreed with that opinion,  
22 and we wanted to make sure the board agreed with  
23 the opinion and had it, you know, generally  
24 available to the public, knowing it was more than  
25 just an opinion prepared by the staff but also by

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# VIDEOTAPE DEPOSITION OF KEVIN J. KENNEDY 2/8/2012

1 the board.  
2 Q Now, the first paragraph on the -- underneath the  
3 heading Summary in the second sentence, it reads,  
4 "Based on the language of the legislation as well  
5 as prior Attorney General opinions, staff has  
6 concluded that legislators began representing  
7 their new districts on August 24th, 2011, but that  
8 the new district boundaries would not govern any  
9 special or recall elections conducted prior to the  
10 2012 General Election." Do you see that?  
11 A Yes.  
12 Q And that was your opinion at the time?  
13 A Yes.  
14 Q Was that the opinion of the board?  
15 A The board adopted that opinion.  
16 Q Is that still your opinion today?  
17 A Yes.  
18 Q Looking at the next paragraph down below that,  
19 there is mention in that paragraph that new  
20 legislation was being introduced to change the  
21 effective date for elections to recall state  
22 senators so that the new legislative districts  
23 would govern any such elections after  
24 November 9th, 2011. Do you see that?  
25 A Yes.

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1 Q Was that ever done?  
2 A It was not enacted. I believe it was introduced.  
3 I don't think that there was even a hearing on it.  
4 I'm reasonably certain it was drafted. I  
5 would have to go back and look, but it was clear  
6 that legislators were considering taking that  
7 action. And, as I said, my understanding was it  
8 had been drafted, but I don't think it even got to  
9 a hearing.  
10 Q And at this point do you know of any similar  
11 legislation that is pending?  
12 A Again, you know, this legislation, if it were  
13 drafted and introduced, could still be pending,  
14 but I'd have to go back and look. I don't know.  
15 You know, from my monitoring of what's going on in  
16 the Legislature, it doesn't appear that it's going  
17 anywhere at this point.  
18 Q I would like you to turn to the next page then,  
19 please. Up at the top -- This is page 2 of the  
20 November 9th memorandum. There is a heading at  
21 the top of the page that states Section 10.  
22 Initial Applicability. Do you see that?  
23 A Yes.  
24 Q Then there are two numbered paragraphs, a 1 and a  
25 2?

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1 A Yes.  
2 Q And the first sentence of the next paragraph  
3 states, "Based upon the plain language of  
4 section 10(2) of Act 43, staff has concluded that  
5 any special or recall election to be filled or  
6 contested prior to the 2012 General Election must  
7 be conducted using the legislative district  
8 boundaries which existed prior to the enactment of  
9 Act 43." Do you see that?  
10 A Yes.  
11 Q And is that the same opinion that we addressed a  
12 minute ago in the summary of this memo?  
13 A Yes.  
14 Q That's an opinion that the board adopted as well?  
15 A Yes.  
16 Q And that's an opinion you still hold today?  
17 A Yes.  
18 Q If you'd turn to the next page, page 3. There is  
19 a reference in the second full paragraph down,  
20 it's the paragraph that begins finally. In the  
21 middle of that page it states, "Absent any  
22 additional legislative action, staff recommends  
23 that the Board approve the draft Guideline." Do  
24 you see that?  
25 A Yes.

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1 Q And is it your testimony that the board did,  
2 in fact, approve that draft guideline?  
3 A Yes.  
4 Q I'd like for you to turn to the next page, then.  
5 Have you seen this document before?  
6 A I don't recall seeing it, but I know it was  
7 distributed to me.  
8 Q For the record, it's a November 11th, 2011, memo  
9 to Wisconsin municipal clerks and some various  
10 other parties from Nathaniel E. Robinson, election  
11 division administrator of the G.A.B., and ccs are  
12 to you, to Ross Hein and Sarah Whitt; correct?  
13 A That's right.  
14 Q In the second bullet point that's depicted on the  
15 first page of this November 11th memo there is a  
16 statement, "In the event of a legislative recall  
17 election, the old districts will be used." Do you  
18 see that?  
19 A Yes.  
20 Q Was that a correct statement by Mr. Robinson?  
21 A Yes.  
22 Q And by old districts, that indicates the districts  
23 that were in place as of -- the Court-drawn  
24 districts from 2002 that were in place before  
25 Acts 43 and 44 were adopted?

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# VIDEOTAPE DEPOSITION OF KEVIN J. KENNEDY 2/8/2012

1 A Yes.

2 Q Mr. Kennedy, have you seen the Complaint that was

3 filed in this case?

4 A I have.

5 Q Are you -- Have you seen the Second Amended

6 Complaint that was filed in this case?

7 A I have seen it.

8 Q Did you assist in preparing an answer to the

9 Second Amended Complaint?

10 A Only to the extent that it was presented to us by

11 our attorneys and said please look over the

12 response and offer any comments.

13 Q I'll hand you a copy of what we previously have

14 marked in this case as Exhibit No. 12. I'd ask

15 you to take a look at it.

16 A Okay.

17 Q Have you seen Exhibit No. 12 before?

18 A It was provided to me, yes.

19 Q So this is the G.A.B.'s Answer and Affirmative

20 Defenses to the Plaintiffs', that's the Baldus

21 Plaintiffs, Second Amended Complaint for

22 Declaratory and Injunctive Relief; is that right?

23 A That's right.

24 Q And it was provided to you at the time -- on or

25 about the time it was filed?

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1 A Yes.

2 Q Did you review it before it was filed?

3 A I don't recall that I specifically reviewed it,

4 but, you know, we were given the opportunity to

5 review it.

6 Q Do you recall making any comments to the draft of

7 the answer?

8 A I don't recall making any comments.

9 Q Can you identify anything in Exhibit 12 that

10 reflects your contributions?

11 A Not without reading it again more carefully.

12 Q Did you or anyone else on the -- members of the

13 board need to approve Exhibit 12 before it was

14 filed?

15 A We did not formally approve it. You know,

16 generally this would be provided to us by our

17 attorneys. They'd ask us to look over it and make

18 any comments or suggestions and return it, and

19 that's done internally by myself and staff

20 counsel.

21 Q Do you recall any objections that you or staff

22 counsel raised to anything that was contained

23 within Exhibit 12?

24 A I don't --

25 MR. HODAN: Objection,

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1 attorney-client privilege. You're talking

2 about discussions --

3 MR. POLAND: I'm not talking about

4 the substance. I'm not talking about the

5 substance, just whether.

6 MR. EARLE: Could you read the

7 question back? I momentarily wandered.

8 COURT REPORTER: Do you recall --

9 MR. HODAN: Doug, I'm still going

10 to object because you're asking about

11 attorney-client communications.

12 MR. EARLE: Can I get the question

13 back?

14 MR. POLAND: Let's get the question

15 read back.

16 MR. HODAN: Sure.

17 (Question read)

18 MR. POLAND: So I will withdraw the

19 question. Let me ask a different question.

20 Q Do you recall whether, and I'm just asking if, you

21 or any other staff counsel raised any objections

22 to any of the statements that were contained in

23 Exhibit 12?

24 MR. HODAN: Objection. Calls for a

25 disclosure of attorney-client privilege, and

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1 I guess I'm going to instruct him at this

2 point not to answer.

3 MR. POLAND: I'm just asking

4 whether. I'm not asking for the substance.

5 I'm just asking if.

6 MR. HODAN: No, but by asking him

7 whether, you are, in fact, asking for the

8 substance.

9 Q Mr. Kennedy, are you going to follow counsel's

10 instruction not to answer the question?

11 A Yes, I am.

12 Q I'd like to turn your attention to page 4.

13 MR. KELLY: Let me just -- Doug, if

14 you're interested in whether the topic was

15 discussed, you could ask that.

16 MR. POLAND: All right. I will

17 ask.

18 Q Was the topic discussed whether you had any

19 objections -- you or any other members of the

20 G.A.B. staff had any objections to statements that

21 were contained in Exhibit 12?

22 A I don't recall specifically, no.

23 Q Turn to page 4, please. Do you see at the top of

24 page 4 there is a restatement of allegations

25 contained within the Second Amended Complaint?

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# VIDEOTAPE DEPOSITION OF KEVIN J. KENNEDY 2/8/2012

1 A I see a statement of what the plaintiffs seek in  
2 their declaratory judgment.  
3 Q Is it your understanding that that restates  
4 allegations in the Plaintiffs' Second Amended  
5 Complaint?  
6 A That's my understanding of what it's purported to  
7 do, yes.  
8 Q Do you see at the top it states, "The plaintiffs  
9 seek a declaratory judgment that," and it sets out  
10 a number of bullet points?  
11 A Yes.  
12 Q I'd like to draw your attention to the last bullet  
13 point in that list. "Any special or recall  
14 elections cannot be conducted under Act 43 because  
15 plaintiffs would be deprived of equal protection  
16 and their right to mandate legislative elections  
17 and participate in them pursuant to the state  
18 constitution." Do you see that statement?  
19 A I see that statement.  
20 Q Is it your understanding that plaintiffs are  
21 seeking a declaratory judgment asking for that  
22 relief?  
23 A Yes.  
24 Q I'd like you to look in the answer to the third  
25 summary paragraph and the last line of that

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1 answer. Do you see that the answer states that  
2 the G.A.B. -- or the defendants deny that the  
3 plaintiffs are entitled to any declaratory relief?  
4 A Yes.  
5 Q Is it still your position and the G.A.B.'s  
6 position that the plaintiffs -- that they deny  
7 that plaintiffs are entitled to the declaratory  
8 relief set forth in the Complaint?  
9 MR. HODAN: Objection. That calls  
10 for a legal conclusion and also calls for a  
11 conclusion with respect to this Court's  
12 jurisdiction over that issue. Subject to  
13 that, you can attempt to answer, if you know.  
14 A Could you restate the question again?  
15 MR. POLAND: Would you read it  
16 back?  
17 (Question read)  
18 MR. HODAN: I'm going to reiterate  
19 the same objection and indicate now that  
20 you're getting into defendants' legal  
21 strategy. If you --  
22 Q You can answer the question.  
23 MR. HODAN: If you can attempt to  
24 answer that, go ahead.  
25 MR. EARLE: And I'm going to object

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1 to the objection. I think it's an improper  
2 objection.  
3 Q The G.A.B. has denied that allegation in this  
4 Complaint; correct?  
5 A That's my understanding.  
6 Q All right. Is it still G.A.B.'s position they  
7 deny that allegation?  
8 A Well, we issued an opinion on the face of the Act  
9 that was adopted. That's the G.A.B.'s position.  
10 Q And, specifically, this is the G.A.B.'s answer to  
11 the Second Amended Complaint; correct?  
12 A That's right.  
13 Q All right. Do you know of any amended answer to  
14 the Second Amended Complaint?  
15 A I'm not sure.  
16 Q Have you -- You don't recall seeing any pleading,  
17 any amended answer that amends that response  
18 beyond what's given in Exhibit 12; is that  
19 correct?  
20 A That's correct.  
21 Q I'd like you to look, just below that statement  
22 that the G.A.B. denies plaintiffs are entitled to  
23 any declaratory relief, there is another paragraph  
24 that sets forth plaintiffs' allegations. Do you  
25 see that?

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1 A I see that.  
2 Q Do you see that there is a statement that says,  
3 "Upon such declarations, plaintiffs request  
4 injunctive relief prohibiting any elections,  
5 including recall or special elections, from being  
6 conducted under the boundaries created by the new  
7 statutes." Do you see that?  
8 A I see that.  
9 Q I'd like you to turn the page, please. Do you see  
10 in the answer to the fourth summary paragraph it  
11 states, "Defendants deny that the plaintiffs are  
12 entitled to any injunctive relief?" Do you see  
13 that?  
14 A Yes.  
15 Q All right. Is it still true the G.A.B. denies  
16 that the plaintiffs are entitled to any injunctive  
17 relief?  
18 MR. HODAN: Objection, calls for a  
19 legal conclusion. You can go ahead and  
20 answer.  
21 A Again, this is the attorney's response to this,  
22 you know, and that's what I -- you know, the  
23 attorneys are charged with responding on behalf of  
24 the G.A.B.  
25 Q And that's what the attorneys have written and

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# VIDEOTAPE DEPOSITION OF KEVIN J. KENNEDY 2/8/2012

1 what's been filed with the Court; correct?  
2 A That's correct.  
3 Q I'd like you to turn to page 21 of Exhibit No. 12.  
4 I'd draw your attention specifically to  
5 paragraph 33 which appears to restate the  
6 allegations in paragraph 33 of the Plaintiffs'  
7 Second Amended Complaint. The allegation as it's  
8 reprinted here states, "If not otherwise enjoined  
9 or directed, the G.A.B. will carry out its  
10 statutory responsibilities involving the 2012  
11 state legislative elections," and there is a dash,  
12 "and any recall or special elections before then,"  
13 and there is another dash, "based on the  
14 impermissibly-drawn boundaries, which will harm  
15 the plaintiffs by violating their constitutional  
16 rights." Do you see that?  
17 A I see that.  
18 Q Then there is an answer, and the answer states,  
19 "Defendants ADMIT that, absent a court order to  
20 the contrary, G.A.B. intends to conduct all  
21 special or recall elections scheduled before the  
22 fall 2012 general elections under the  
23 now-unconstitutional boundaries established by  
24 this Court in *Baumgart v. Wendelberger*," and it  
25 goes on with a citation there. Do you see that?

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1 A I see that.  
2 Q Then it states, "Defendants DENY all other  
3 allegations in paragraph 33." Do you see that?  
4 A Yes.  
5 Q All right. Is that still -- Is it G.A.B.'s  
6 position that that is still a true and correct  
7 response to paragraph 33 of Plaintiffs' Complaint?  
8 A This is the response that was drafted by our  
9 attorneys on behalf of the G.A.B. What I can say  
10 is what the G.A.B.'s opinion was on what elections  
11 it will do. Characterizing them on whether  
12 they're constitutional or unconstitutional, I will  
13 say I'm not aware of a finding yet of  
14 unconstitutionality of the old districts with  
15 respect to conducting any special or recall  
16 elections, and we have conducted one special  
17 election since then, since Act 43 was adopted,  
18 under the old boundaries.  
19 Q Paragraph 34 immediately follows. The restated  
20 allegations in paragraph 34 of Plaintiffs' Second  
21 Amended Complaint states, "In the absence of these  
22 statutorily- and constitutionally-permissible  
23 districts, any elections conducted under the  
24 G.A.B.'s supervision will deprive the individual  
25 plaintiffs of their civil rights under color of"

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1 law -- "state law in violation of 42 U.S.C.  
2 sections 1983 and 1988." Do you see that --  
3 A Yes.  
4 Q -- allegation as it's reprinted there?  
5 A Correct.  
6 Q And do you see the answer that's given,  
7 "Defendants ADMIT that any elections conducted  
8 under the now-unconstitutional boundaries  
9 established by this Court in *Baumgart v.*  
10 *Wendelberger*," it again has the citation, "will  
11 deprive the individual plaintiffs of their civil  
12 rights under color of state law in violation of  
13 42 U.S.C. sections 1983 and 1988. However,  
14 conducting elections under 2011 Wisconsin Acts 43  
15 and 44 will not deprive anyone of their civil  
16 rights. Defendants DENY all remaining allegations  
17 in paragraph 34." Do you see that?  
18 A Yes.  
19 Q And does that still set forth G.A.B.'s answer to  
20 the allegations in paragraph 34 of Plaintiffs'  
21 Second Amended Complaint?  
22 A Again, that was the answer that was prepared by  
23 our attorneys, and, as I clarified, I'm not aware  
24 that there has been any finding of  
25 unconstitutionality of the prior districts.

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1 Q I'd like you to turn to paragraph number 62. It's  
2 on page 30. There is an allegation, "The effect  
3 of Acts 43 and 44 is to give the Republican  
4 majority an unfair electoral advantage,  
5 disproportionate to its historical success, in an  
6 attempt to preserve their political majorities and  
7 minimize the prospects for the minority party.  
8 For example," and it sets forth two paragraphs, an  
9 A and a B. Do you see that?  
10 A Yes.  
11 Q The answer to paragraph 62 simply states,  
12 "Defendants DENY paragraph 62." Do you see that?  
13 A Yes.  
14 Q Is it still G.A.B.'s position -- or I should say  
15 is it still the defendants' position that they  
16 deny the allegations in paragraph 62?  
17 A Again --  
18 MR. HODAN: Objection, calls for a  
19 legal conclusion, but go ahead, you can  
20 answer.  
21 A Again, this was prepared by our attorneys who are  
22 responsible for defending the law that's presented  
23 to them, and we have to rely on their analysis  
24 when it comes to providing these responses.  
25 Q As far as you know, that is still the position for

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# VIDEOTAPE DEPOSITION OF KEVIN J. KENNEDY 2/8/2012

1 the defendants that is on file and the operable  
2 answer in the federal court?  
3 MR. HODAN: Objection, asked and  
4 answered. Go ahead and answer it again.  
5 A I'm not aware of any additional filings that would  
6 be contrary to that.  
7 Q For the next question I'm going to ask you to get  
8 Exhibit 166 back out, please. It has Exhibit E on  
9 the front.  
10 I will represent to you, Mr. Kennedy,  
11 Exhibit E is Exhibit E to Plaintiffs' Second  
12 Amended Complaint. If you look at the bottom of  
13 Exhibit E, Exhibit 166, you'll see that it does  
14 have a file stamp date on it indicating that it  
15 was filed in this particular case.  
16 With that predicate, I'd like you to turn to  
17 paragraph 97 that's set forth on page 40. The  
18 restated allegation in paragraph 97 that's set  
19 forth on page 40 states, "Any effort to conduct  
20 special or recall elections under the boundaries  
21 established by Act 43 would violate that policy,  
22 and pending the resolution of this litigation  
23 disrupt the status quo in the electoral boundaries  
24 of a decade established" by the Court -- "by this  
25 Court. It will deprive plaintiffs of equal

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1 protection and their constitutional right to  
2 participate in legislative elections pursuant to  
3 recall." Do you see that paragraph?  
4 A Yes.  
5 Q Do you see the answer states, "To the extent the  
6 reference to 'that policy,'" and that's in  
7 quotation marks, "means Exhibit E, the defendants  
8 DENY that Exhibit E is a policy." Do you see that  
9 statement?  
10 A Yes.  
11 Q Does Exhibit E that you have in front of you, it's  
12 been marked as Exhibit 166, does that constitute a  
13 policy?  
14 MR. HODAN: Object to form. Go  
15 ahead.  
16 A Exhibit E reflects how we intend to conduct the  
17 recall elections that are presently in front of us  
18 if we determine that they're sufficient.  
19 Q And then the answer goes on to state, "The  
20 defendants ADMIT that conducting special or recall  
21 elections under the boundaries established by  
22 Act 43 would be inconsistent with the information  
23 contained in Exhibit E." Do you see that?  
24 A Yes.  
25 Q Is that your -- Is that still the G.A.B.'s answer

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1 to paragraph 97 of the Second Amended Complaint?  
2 A I'm not aware of anything that changed that  
3 answer.  
4 Q Turning to the paragraph directly below, there is  
5 a -- paragraph 98 allegations are set forth. Do  
6 you see that?  
7 A Yes.  
8 Q And without reading them all, I will simply read  
9 the answer that's given to paragraph 98. It  
10 states, "The defendants ADMIT that the Second  
11 Amended Complaint challenges the constitutionality  
12 of 2011 Wisconsin Acts 43 and 44. The defendants  
13 DENY all other allegations of this paragraph." Do  
14 you see that?  
15 A Yes.  
16 Q All right. Does that remain -- Is that a true  
17 statement as of today?  
18 A I'm not aware of any changes to that statement.  
19 Q I'd like you to turn to page 41, paragraph number  
20 100 of Plaintiffs' Second Amended Complaint, which  
21 is restated here. It states, "The challenged 2011  
22 districts cannot serve as districts for any future  
23 elections, whether regular, special or recall  
24 elections, unless and until this Court rules on  
25 the constitutionality of the districts." Do you

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1 see that?  
2 A I'm sorry, paragraph 100 or 101?  
3 Q No, that's paragraph 100 of the allegations.  
4 A Okay.  
5 Q Right at the top of the page.  
6 A Yes, okay. No, I just happened to be reading 101  
7 when you said that.  
8 Q You're a step ahead of me. Do you see the  
9 allegations in paragraph 100?  
10 A Yes.  
11 Q And you see the answer to paragraph 100 is that  
12 defendants deny those allegations; correct?  
13 A Yes.  
14 Q Is that still G.A.B.'s position?  
15 A I'm not aware that we've filed anything different.  
16 Q And then finally, paragraph 101, the allegations  
17 that are restated are that "The 2002 districts,  
18 therefore, are the only legal, valid and proper  
19 districts for any election prior to final  
20 disposition in this case." Do you see that?  
21 A Yes.  
22 Q And the answer is that the defendants deny  
23 paragraph 101. Do you see that?  
24 A Yes.  
25 Q Are you aware that G.A.B. has changed its position

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# VIDEOTAPE DEPOSITION OF KEVIN J. KENNEDY 2/8/2012

1 in response to paragraph 101?

2 A No.

3 Q All right. Actually, I do have one final question

4 for you, and that's on page 45. At the top of the

5 page you'll see that there is a demand for

6 judgment; correct? Paragraph 45. I'm sorry, page

7 45.

8 A I'm on page 45.

9 Q It runs over from page 44. At the bottom of

10 page 44 and onto the top of page 45. This is a

11 listing of the defendants, and it states they

12 demand judgment as follows.

13 A Yes, right.

14 Q Do you see that?

15 A Yes.

16 Q So is it true that the G.A.B. demands judgment,

17 number one, denying the declaratory relief sought

18 by the plaintiffs?

19 MR. HODAN: Objection, calls for a

20 legal conclusion. Go ahead and answer.

21 A That's what is presented in the documents, yes.

22 Q And the second paragraph, denying the injunctive

23 relief sought by the plaintiffs; is that correct?

24 MR. HODAN: Same objection for the

25 remaining questions on this, but you can go

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1 ahead and answer them.

2 A That's what is stated on the demand for judgment,

3 yes.

4 Q Then the fourth paragraph, that the G.A.B.

5 declares -- demands judgment to declare and

6 establish the election district boundaries under

7 which the defendants should conduct the recall and

8 special elections prior to the regular primary and

9 general 2012 elections?

10 A Yes. I'm sorry, I see that. What was your

11 question?

12 Q Yes. Is it true that's what the G.A.B. has

13 demanded in this pleading?

14 A Yes, that is what was presented.

15 Q Are you aware of any change to that demand?

16 A No.

17 Q You can set that document to the side.

18 (Exhibit No. 167 marked for

19 identification)

20 Q Mr. Kennedy, I'm handing you a document that is

21 marked as Exhibit No. 167. You'll be happy to

22 hear this is the last document that I have to mark

23 here today.

24 (Discussion held off record)

25 MR. HODAN: We've had that happen

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1 before.

2 THE WITNESS: I'm sure.

3 Q I'll give you a minute to look over it. Take as

4 much time as you need.

5 A Okay.

6 Q Mr. Kennedy, have you seen Exhibit 167 before?

7 A It was presented to me.

8 Q When did you see it?

9 A I don't recall.

10 Q Can you identify the document for the record,

11 please?

12 A It's identified as Answer to Amended Complaint for

13 Declaratory and Other Relief.

14 Q This is an answer that was filed in an action in

15 Waukesha County Circuit Court; correct?

16 A Yes.

17 Q I'd like you to turn to page number 15 of

18 Exhibit 167. Do you see that it states that it

19 was filed -- or at least dated January 20th, 2012?

20 A Yes.

21 Q Is it your understanding that it was filed with

22 the Court on or around January 20th, 2012?

23 A I assume so, yes.

24 Q The action -- or the lawsuit is a lawsuit in which

25 you are named as a defendant in your capacity as

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1 the director and general counsel for the Wisconsin

2 Government Accountability Board; correct?

3 A That's right.

4 Q I'd like you to turn to page 2 of Exhibit No. 167.

5 And do you see up toward the top of the page there

6 is a restatement of allegations in the Complaint;

7 correct?

8 A Under summary paragraph 1?

9 Q Correct, yes. So that states, "Following the

10 enactment of 2011 Wisconsin Acts 43 and 44, by the

11 state legislature, (2011 redistricting plan) the

12 Government Accountability Board, G.A.B., which is

13 the state agency responsible for administering the

14 laws concerning the conduct of elections in the

15 State of Wisconsin, issued formal guidance that

16 any recall elections which may be initiated and

17 held prior to the general election in November of

18 2012 are to be conducted in the old legislative

19 districts established by the 2002 Court adopted

20 redistricting plan (the 2002 court plan)." Do you

21 see that?

22 A Yes.

23 Q And the answer to summary paragraph number one,

24 the answer states, "Defendants ADMIT the

25 allegations of the first sentence in summary

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# VIDEOTAPE DEPOSITION OF KEVIN J. KENNEDY 2/8/2012

1 paragraph 1." Do you see that?

2 A Yes.

3 Q All right. Do the defendants or does the G.A.B.

4 at least still admit the allegations of that first

5 sentence in that summary paragraph?

6 MR. HODAN: Objection. Calls for a

7 legal conclusion. Go ahead. Subject to

8 that, you can go ahead and answer.

9 A I'm trying to figure out where the first sentence

10 ends, if it does end.

11 Q It does, I believe. Well, there is a period --

12 A Oh, there it is.

13 Q Yeah.

14 A Yes, that reflects -- again, restate your

15 question.

16 MR. POLAND: Could you read back

17 the last question that I asked?

18 (The following question was read:

19 "Q. Do the defendants or does the

20 G.A.B. at least still admit

21 the allegations of that first

22 sentence in that summary

23 paragraph?")

24 A And the answer is, yes, we do.

25 Q Mr. Kennedy, what is the status of the

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1 Waukesha County Circuit Court action in which this

2 answer was filed?

3 A I'm not aware that anything has happened since

4 this answer was filed.

5 Q Do you know whether any ruling from an appellate

6 court has affected the status of this case?

7 A Not that I'm aware of at the moment.

8 MR. POLAND: I don't have any

9 further questions at this time.

10 MR. HASSETT: I've got a few.

11 MR. HODAN: How long do you think?

12 MR. HASSETT: Very brief.

13 MR. HODAN: Okay. Otherwise I

14 would suggest a break since it's 12:30.

15 MR. HASSETT: To make it simple, if

16 we can mark this as an exhibit. We're up to

17 168. This is the affidavit that you

18 previously gave in the context of a motion.

19 (Exhibit No. 168 marked for

20 identification)

21

22 EXAMINATION

23 By Mr. Hassett:

24 Q Mr. Kennedy, I wanted to refer you that that

25 affidavit is now Exhibit 168, and you recognize

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1 this?

2 A I do.

3 Q And directing your attention to, I believe,

4 paragraph 8, is it your opinion that historically

5 the census data used by the state legislature or

6 federal three-court panels to draw redistricting

7 maps has been inaccurate and incomplete?

8 A Yes.

9 Q And it is -- Your opinion is based on the

10 following reasons, and I think this refers to

11 paragraphs 9, 10 and 11. A, "the census itself

12 (that is, the counting of people by the Census

13 Bureau) is never entirely accurate. The Census

14 Bureau misses some people during its count." Do

15 you agree with that?

16 A Yes.

17 Q B, "the boundary lines and the geographical maps

18 used by the census are not always accurate. The

19 Census Bureau openly acknowledges this." Do you

20 agree with that?

21 A Yes.

22 Q Paragraph C, "the census is outdated as soon as it

23 is released to the public. In the intervening

24 period between when the census is released and the

25 redistricting maps are drawn by either the state

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1 legislature or federal three-judge panel, as in

2 1982, 1992 and 2002 (which can be almost two years

3 in some cases), some people have moved, other

4 people have died, babies have been born, nonvoting

5 age citizens have become of voting age, and some

6 boundary lines have shifted through annexations."

7 Do you agree with that?

8 MR. HODAN: Counsel, you mean

9 paragraph 11 rather than C?

10 MR. HASSETT: Paragraph 11, yes.

11 I'm sorry.

12 MR. HODAN: You can go ahead and

13 answer.

14 A Yes.

15 Q And you agree that it is impossible to have

16 precise equal population for all citizens of the

17 United States because congressional boundaries

18 cannot cross state lines? This means that the

19 citizens of some states would be underrepresented

20 and the citizens of other states will be

21 overrepresented?

22 A I know that that's the case.

23 Q Okay. That's all my questions concerning your

24 affidavit.

25 One other question relates to what has been

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# VIDEOTAPE DEPOSITION OF KEVIN J. KENNEDY 2/8/2012

1 described as anomalies by your agency. We've had  
2 a fair amount of testimony today on the anomalies.  
3 Would these issues have been avoided had the  
4 redistricting been done in the traditional manner  
5 as it was done prior to this last year in 2011,  
6 and by that I mean the local units of government  
7 perform their districting first with wards?  
8 A I don't know. I would expect that you'd still  
9 have problems with maps lining up.  
10 Q Well, have you had these problems in the past?  
11 A We've never had to deal with this situation in the  
12 past. We did not have a Statewide Voter  
13 Registration System until 2006, so any of the  
14 issues that would have come up in the past would  
15 have been at the local level, and we do know that  
16 we would find over the course of -- in my  
17 experience, that people, you know, that local  
18 election officials may have put people in the  
19 wrong district for issuing ballots based on their  
20 misconceptions of what was provided to them,  
21 you know. And again my experience, I've been with  
22 the agency since April of 1979 and so we had  
23 redistricting in '82, '92 and 2002, you know. We  
24 always would find some administrative error on  
25 this, but we weren't using -- this is the first

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1 time that our agency was actually involved with  
2 respect to having to maintain a Statewide Voter  
3 Registration System where we had the  
4 responsibility to make sure that people were  
5 registered in the right place so that they would  
6 get the right ballots. Prior to that time  
7 registration lists in the municipalities that had  
8 registration were maintained by those 350-plus  
9 municipalities that had it and the remaining 1,500  
10 municipalities that did not have voter  
11 registration didn't maintain any lists.  
12 Q To your knowledge is this the first time the  
13 redistricting has been based on census blocks?  
14 A I think census blocks were always involved to some  
15 degree, because they have to count population.  
16 But, again, we weren't involved in drawing the  
17 lines or anything along those lines.  
18 In other words, I'm sure census blocks might  
19 have been looked at for -- at the local level for  
20 drawing wards because they had to establish wards  
21 within a certain population. The statutes require  
22 under 5.15 that municipalities' wards can only be  
23 in certain sizes unless they cross county lines or  
24 some other statutory exceptions.  
25 Q Well, is the fact that the Legislature did the

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1 redistricting process before the local communities  
2 or units of government did their redistricting,  
3 has that created a set of problems you did not  
4 have in prior redistricting efforts?  
5 A It has created more work for the municipalities  
6 because they've had to make adjustments to wards  
7 that they had -- because many of them had already  
8 drafted wards when the new plans came out and then  
9 they had to make some changes, which is Act 39  
10 providing them some direction on that.  
11 So, yes, it's provided more work at the state  
12 and local levels as a result of this approach.  
13 MR. HASSETT: Thank you. I have  
14 nothing further.  
15 MR. POLAND: Peter or Jackie, do  
16 you have any questions?  
17 MS. BOYNTON: No.  
18 MR. EARLE: No.  
19 MR. HODAN: Why don't we take a  
20 short break.  
21 VIDEOGRAPHER: This concludes  
22 today's deposition. The time is 12:35 p.m.  
23 We are now off the record.  
24 MR. HODAN: Why don't you give us  
25 two minutes. We might be done.

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1 (Recess)  
2 VIDEOGRAPHER: The time is  
3 12:43 p.m. We are back on the record.  
4  
5 EXAMINATION  
6 By Mr. Hodan:  
7 Q Mr. Kennedy, I have one question. Can the G.A.B.  
8 implement Acts 43 and 44 without violating the  
9 law?  
10 A Yes, I believe we can.  
11 MR. HODAN: I have no further  
12 questions.  
13 MR. POLAND: I have a follow-up  
14 question.  
15  
16 RE-EXAMINATION  
17 By Mr. Poland:  
18 Q How can you G.A.B. implement the -- How can the  
19 G.A.B. implement Acts 43 and 44 without violating  
20 the law?  
21 A Well, I believe that through the actions we're  
22 taking we're making sure that all the voters are  
23 in the districts that are assigned to Act 43 and  
24 4 -- by Act 43 and 44.  
25 In other words, by looking at the exception

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## VIDEOTAPE DEPOSITION OF KEVIN J. KENNEDY 2/8/2012

reports and working with the local election officials, you know, we're making sure that the voters will get the proper ballots.

All right. You still don't know, however, whether the act of ensuring that voters get the proper ballots changes the population -- the population deviations under Acts 43 and 44; is that correct?

MR. HODAN: Objection, asked and  
1. You can go ahead and answer that.

Again, what we do has nothing to do with population from our perspective. We're only trying to make sure that the voters are assigned to the right districts. Those districts right now are set out in Acts 43 and 44, and administratively we have to work with the information we have to make sure that's done. And that's, you know, what all of our efforts have been directed at since we got that information and retooled our system.

MR. POLAND: No further questions.

VIDEOGRAPHER: This concludes today's deposition. The time is 12:45 p.m. We are now off the record.

(Adjourning at 12:45 p.m.)

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relative or employee of any attorney or counsel  
employed by the parties hereto or financially  
interested in the action.

In witness whereof I have hereunto set my hand and affixed my notarial seal this 9th day of February 2012.

Notary Public, State of Wisconsin  
Registered Professional Reporter  
Certified Realtime Reporter

My commission expires  
August 19, 2012

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STATE OF WISCONSIN )  
 ) ss.  
COUNTY OF DANE )

I, PEGGY S. CHRISTENSEN, a Registered Professional Reporter and Notary Public duly commissioned and qualified in and for the State of Wisconsin, do hereby certify that pursuant to notice, there came before me on the 8th day of February 2012, at 9:11 in the forenoon, at the offices of Godfrey & Kahn, S.C., Attorneys at Law, One East Main Street, Suite 500, in the City of Madison, County of Dane, and State of Wisconsin, the following named person, to wit: KEVIN J. KENNEDY, who was by me duly sworn to testify to the truth and nothing but the truth of his knowledge touching and concerning the matters in controversy in this cause; that KEVIN J. KENNEDY was thereupon carefully examined upon his oath and his examination reduced to typewriting with computer-aided transcription; that the videotape deposition is a true record of the testimony given by the witness; and that reading and signing was not waived.

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action in which this deposition is taken and further that I am not a

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# VIDEOTAPE DEPOSITION OF KEVIN J. KENNEDY 2/8/2012

<p style="text-align: center;"><b>'</b></p> <p><b>'82</b> [1] - 133:23  <b>'92</b> [1] - 133:23  <b>'anomalies'</b> [2] - 76:25, 77:7  <b>'directly</b> [1] - 16:1  <b>'state</b> [1] - 15:25  <b>'that</b> [1] - 122:6</p>	<p>110:23, 111:23,  112:21, 115:18, 117:3  <b>121</b> [2] - 39:12, 41:11  <b>126</b> [1] - 4:5  <b>12:30</b> [1] - 130:14  <b>12:35</b> [1] - 135:22  <b>12:43</b> [1] - 136:3  <b>12:45</b> [2] - 137:22,  137:24  <b>12th</b> [1] - 102:10  <b>13</b> [9] - 4:13, 11:13,  11:16, 11:19, 11:22,  12:7, 12:13, 78:7,  78:8  <b>130</b> [2] - 3:5, 4:7  <b>136</b> [1] - 3:6  <b>13th</b> [6] - 17:20,  17:24, 50:3, 60:20,  85:13, 85:16  <b>14</b> [2] - 3:12, 67:19  <b>14th</b> [1] - 96:16  <b>15</b> [2] - 50:11, 127:17  <b>150</b> [7] - 4:13, 46:24,  47:1, 47:4, 47:11,  47:14, 47:18  <b>151</b> [6] - 4:13, 32:11,  32:13, 32:18, 32:20,  35:1  <b>157</b> [3] - 3:10, 7:1,  7:21  <b>158</b> [8] - 3:11, 14:17,  14:20, 14:21, 14:22,  14:25, 15:9, 15:18  <b>159</b> [9] - 3:13, 36:8,  36:11, 36:16, 36:21,  37:17, 38:7, 46:6,  46:14  <b>15th</b> [2] - 17:23,  96:23  <b>16</b> [1] - 85:19  <b>16-county</b> [1] - 85:23  <b>160</b> [5] - 3:14, 67:3,  67:6, 67:11, 67:16  <b>161</b> [9] - 3:15, 71:5,  71:8, 71:9, 71:13,  71:20, 71:22, 76:23,  80:12  <b>162</b> [13] - 3:18,  41:23, 78:23, 79:3,  79:7, 79:9, 79:14,  79:20, 79:24, 80:2,  80:11, 80:19, 82:11  <b>163</b> [16] - 3:20,  82:21, 83:16, 83:24,  84:1, 84:4, 84:18,  85:12, 86:2, 86:8,  86:14, 86:15, 87:1,  87:10, 87:16, 92:9  <b>163-165</b> [1] - 82:18  <b>164</b> [8] - 3:21, 82:22,</p>	<p>83:20, 86:2, 93:13,  93:14, 93:23, 94:12  <b>165</b> [5] - 3:22, 82:22,  83:22, 86:3, 95:4  <b>166</b> [10] - 4:3,  102:17, 102:18,  102:21, 102:23,  103:1, 104:6, 121:8,  121:13, 122:12  <b>167</b> [6] - 4:4, 126:18,  126:21, 127:6,  127:18, 128:4  <b>168</b> [4] - 4:6, 130:17,  130:19, 130:25  <b>17</b> [1] - 6:11  <b>19</b> [1] - 139:11  <b>1900s</b> [1] - 97:16  <b>1979</b> [1] - 133:22  <b>1982</b> [1] - 132:2  <b>1983</b> [2] - 119:2,  119:13  <b>1988</b> [2] - 119:2,  119:13  <b>1990</b> [1] - 19:14  <b>1992</b> [1] - 132:2  <b>19th</b> [2] - 99:15,  99:16  <b>1st</b> [3] - 96:25, 97:22</p>	<p>71:17, 73:14, 96:16,  103:20, 105:10,  107:6, 117:10,  117:22, 126:9,  127:19, 127:22,  128:18, 138:7, 139:6,  139:11  <b>20th</b> [2] - 127:19,  127:22  <b>21</b> [1] - 117:3  <b>2100</b> [1] - 6:14  <b>2266</b> [1] - 5:23  <b>22nd</b> [1] - 11:20  <b>23rd</b> [6] - 17:15,  18:10, 18:13, 69:23,  70:10, 73:14  <b>24th</b> [1] - 105:7  <b>25</b> [1] - 18:12  <b>262</b> [1] - 6:18  <b>29</b> [2] - 79:14, 79:16  <b>2nd</b> [1] - 71:17</p>	<p>52:10, 53:15, 53:18,  55:1, 56:21, 60:13,  61:5, 62:4, 62:13,  62:21, 63:4, 63:10,  63:12, 65:9, 72:15,  77:3, 77:8, 77:22,  78:13, 94:9, 95:18,  101:10, 102:1, 102:5,  102:12, 102:13,  104:1, 107:4, 107:9,  108:25, 113:14,  118:17, 119:14,  120:3, 121:21,  122:22, 123:12,  128:10, 136:8,  136:19, 136:23,  136:24, 137:7, 137:14  <b>44</b> [69] - 19:4, 21:15,  22:13, 23:18, 23:25,  24:8, 25:5, 26:7,  29:23, 30:11, 30:16,  31:10, 33:2, 48:6,  48:14, 51:8, 51:17,  52:11, 53:15, 53:18,  55:1, 55:16, 55:25,  56:21, 58:25, 59:10,  59:15, 60:6, 60:13,  61:5, 62:4, 62:13,  62:21, 63:4, 63:10,  65:9, 72:15, 77:3,  77:8, 77:22, 78:4,  78:13, 88:2, 88:4,  88:8, 88:20, 89:17,  92:13, 92:16, 93:1,  93:5, 93:10, 102:1,  102:5, 102:12,  102:13, 104:1,  108:25, 119:15,  120:3, 123:12, 125:9,  125:10, 128:10,  136:8, 136:19,  136:24, 137:7, 137:14  <b>447-2199</b> [1] - 6:18  <b>45</b> [5] - 125:4, 125:6,  125:7, 125:8, 125:10</p>
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